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~~CAZON~~
~~Ontario Legislative Assembly~~

Government
Publications

~~XB~~

-B 56

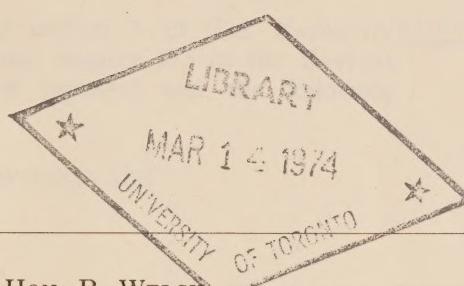
BILL 1

Government Bill

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

(66)

An Act to amend
The University Expropriation Powers Act



THE HON. R. WELCH
Attorney General

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

Under the provisions of *The Wilfrid Laurier University Act, 1973*, Waterloo Lutheran University became Waterloo Lutheran Seminary and a new university was incorporated under the name of Wilfrid Laurier University. This amendment names Wilfrid Laurier University in place of Waterloo Lutheran University as a university to which the Act applies.

BILL 1**1974**

**An Act to amend
The University Expropriation Powers Act**

HIER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause *o* of subsection 1 of section 1 of *The University Expropriation Powers Act*, being chapter 473 of the Revised Statutes of Ontario, 1970, is repealed and the following substituted therefor:
 - (*o*) Wilfrid Laurier University; and
2. This Act comes into force on the day it receives Royal Assent. commencement
3. This Act may be cited as *The University Expropriation Powers Amendment Act, 1974*. short title

BILL 1

An Act to amend
The University Expropriation
Powers Act

1st Reading

March 5th, 1974

2nd Reading

3rd Reading

THE HON. R. WELCH
Attorney General

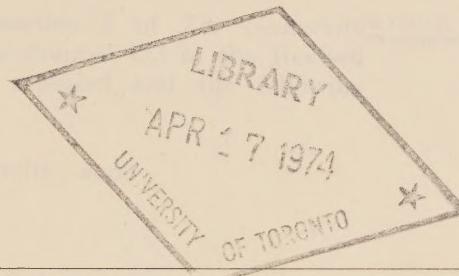
(*Government Bill*)

~~CAZON~~
XB
~~-B 56~~

BILL 1

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

**An Act to amend
The University Expropriation Powers Act**



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BILL 1**1974**

**An Act to amend
The University Expropriation Powers Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause *o* of subsection 1 of section 1 of *The University Expropriation Powers Act*, being chapter 473 of the Revised Statutes of Ontario, 1970, is repealed and the following substituted therefor:
 - (*o*) Wilfrid Laurier University; and
2. This Act comes into force on the day it receives Royal Assent.
3. This Act may be cited as *The University Expropriation Powers Amendment Act, 1974*.

BILL I

An Act to amend
The University Expropriation
Powers Act

1st Reading

March 5th, 1974

2nd Reading

April 1st, 1974

3rd Reading

April 4th, 1974

THE HON. R. WELCH
Attorney General

CAZON
XB
-B 56

BILL 2

Private Member's Bill

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

An Act to amend The Denture Therapists Act, 1972

MR. GERMA



TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTES

SECTION 1. The amendment removes the dental hygienist and the dental technician from the Denture Therapist Licensing Board and replaces them with two more denture therapists increasing the number of denture therapists on the Board to four.

SECTION 2. The amendment removes the requirement that the denture therapists work under the supervision of a dental surgeon, it allows the denture therapist to deal directly with the public but only where the patient can produce a certificate of oral health signed by a dental surgeon or a legally qualified medical practitioner.

SECTION 3. The limitation period for commencing a proceeding under clause *b* of subsection 1 of section 16 of the Act is changed from two years to one year.

SECTION 4. The amendment provides that the Lieutenant Governor in Council may make regulations setting fees to be charged by denture therapists.

BILL 2**1974**

**An Act to amend
The Denture Therapists Act, 1972**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.** Subsection 2 of section 7 of *The Denture Therapists Act, 1972*,<sup>s. 7 (2),
re-enacted</sup> being chapter 163, is repealed and the following substituted therefor:

- (2) The Board shall be composed of,
Composition
of Board
- (a) four members representing the public interest;
 - (b) one dental surgeon;
 - (c) four denture therapists who shall be appointed as soon as practicable after the coming into force of this Act.

- 2.** Sections 14 and 15 of the said Act are repealed and the following substituted therefor:<sup>s. 14,
re-enacted;
s. 15,
repealed</sup>

14. No denture therapists shall practise intra-oral procedures of dental therapy on a patient except where the patient first obtains a certificate of oral health signed by a dental surgeon or a legally qualified medical practitioner, indicating that it will not be injurious to the health of the patient to proceed with the intra-oral procedures.<sup>Certificate
of oral
health
required</sup>

- 3.** Subsection 3 of section 16 of the said Act is repealed and the following substituted therefor:<sup>s. 16 (3),
re-enacted</sup>

(3) No proceeding under clause *b* of subsection 1 shall be commenced more than one year after the time when the subject-matter of the proceeding arose.^{Idem}

- 4.** Section 18 of the said Act is amended by adding thereto the following clause:<sup>s. 18,
amended</sup>

(n) prescribing the fees to be charged by denture therapists.

Commencement

5. This Act comes into force on the day it receives Royal Assent.

Short title

6. This Act may be cited as *The Denture Therapists Amendment Act, 1974*.

An Act to amend
The Denture Therapists
Act, 1972

1st Reading

March 6th, 1974

2nd Reading

3rd Reading

MR. GERMA

(*Private Member's Bill*)

CAZON

XB

-B 56

BILL 3

Private Member's Bill

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

An Act to amend The Dentistry Act



MR. GERMA

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

An Act to amend
The Dentistry Act

1st Reading

March 6th, 1974

2nd Reading

3rd Reading

MR. GERMA

(*Private Member's Bill*)

CAZON

BILL 4

Private Member's Bill

XB

-B 56

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

The Medical Complaints Procedures Act

MR. SINGER



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

BILL 4**1974**

**The Medical Complaints Procedures
Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

(a) "Board" means the Medical Complaints Procedures Board;

(b) "dentist" means a member of The Royal College of Dental Surgeons of Ontario;

(c) "hospital" means hospital as defined in section 1 of *The Public Hospitals Act*;

R.S.O. 1970,
c. 378

(d) "physician" means a legally qualified medical practitioner.

2.—(1) A board to be known as the "Medical Complaints Procedures Board" is hereby established.

(2) The Board shall be composed of a chairman, one or more vice-chairmen and as many other members equal in number representative of lawyers, physicians, dentists and persons representative of the public interest, respectively, as the Lieutenant Governor in Council considers proper, all of whom shall be appointed by the Lieutenant Governor in Council.

(3) The chairman and the one or more vice-chairmen shall each be a Supreme Court Judge.

Chairman
and vice-
chairman,
composition

(4) The Lieutenant Governor in Council shall designate one of the vice-chairmen to be alternate chairman.

3. Vacancies in the membership of the Board from any cause may be filled by the Lieutenant Governor in Council.

Quorum	4. —(1) The chairman or a vice-chairman, one member representative of lawyers, one member representative of physicians, one member representative of dentists and one member representative of the public interest constitute a quorum and are sufficient for the exercise of all the jurisdiction and powers of the Board.
Panels	(2) The chairman or, in the case of his absence from the office of the Board or his inability to act, the alternate chairman shall from time to time assign the members of the Board into panels and may change the composition of such panels at any time.
May sit in panels	(3) The Board may sit in two or more panels simultaneously wherever it considers expedient, so long as a quorum of the Board is present in each panel.
Decisions	5. The decision of the majority of the members of the Board present and constituting a quorum is the decision of the Board, but, if there is no majority, the decision of the chairman or vice-chairman governs.
Practice and procedure, etc.	6. Subject to section 9, the Board shall determine its own practice and procedure but shall give full opportunity to the parties to any proceedings to present their evidence and make submissions, and the Board may, subject to the approval of the Lieutenant Governor in Council, make rules governing its practice and procedure and the exercise of its powers and prescribing such forms as are considered advisable.
Powers and duties of Board	7. —(1) The Board shall exercise such powers and perform such duties as are conferred or imposed upon it by or under this Act.
Specific	<p>(2) Without limiting the generality of subsection 1, the Board has power,</p> <ul style="list-style-type: none"> (a) to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath, and to produce such documents and things as the Board considers requisite to the full investigation and consideration of matters within its jurisdiction in the same manner as a court of record in civil cases; (b) to administer oaths; (c) to accept oral or written evidence;

(d) to authorize any person to do anything that the Board may do under clauses *a* to *c* and to report to the Board thereon;

(e) to authorize the chairman or a vice-chairman to inquire into any complaint, matter or thing within the jurisdiction of the Board, or any part of any of them, and to report to the Board thereon.

8.—(1) Any person who has reasonable grounds for ^{complaints} believing that he has a suit maintainable at law against any doctor, dentist, hospital or hospital employee as a result of their providing medical or dental services to him, may file with the Board a complaint in the prescribed form.

(2) Every complaint under this Act shall be commenced ^{limitation period} within six years from the date of the alleged complaint.

9. Where a complaint has been filed with the Board, ^{Hearing} the Board shall cause a hearing to be held as to the complaint and make a determination.

10.—(1) The parties to a hearing before the Board with ^{Parties to hearing} respect to any complaint are,

(a) the person named in the complaint as the complainant;

(b) any person named in the complaint and alleged to have caused the matter complained of;

(c) any other person specified by the Board upon such notice as the Board may determine and after such person has been given an opportunity to be heard against his joinder as a party.

(2) A true copy of the complaint shall be annexed to ^{copy of complaint annexed to notice} the notice of the hearing that is given to any party.

(3) A member of the Board hearing a complaint shall not have taken part in any investigation or consideration of the complaint prior to the hearing and shall not communicate directly or indirectly in relation to the complaint with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the Board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submission as to the law. ^{Members at hearing not to have taken part in investigation, etc.}

Recording of evidence

(4) The oral evidence taken before a Board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Findings of fact

1971, c. 47

(5) The findings of fact of the Board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of *The Statutory Powers Procedure Act, 1971*.

Jurisdiction of Board

(6) Subject to appeal under section 12, the Board has jurisdiction and authority to determine any question of fact or law or both required to be decided in reaching a determination or for the making of any order pursuant to such determination.

Powers of Board

11. The Board, after hearing a complaint, may order any party to rectify any injury caused to any person or to make compensation therefor.

Appeal from decision of Board

12.—(1) Any party to a hearing before a Board may appeal from the decision or order of the Board to the Supreme Court in accordance with the rules of court.

Record to be filed in court

(2) Where notice of an appeal is served under this section, the Board shall forthwith file in the Supreme Court the record of the proceedings before it in which the decision or order appealed from was made which, together with a transcript of the oral evidence taken before the Board if it is not part of the record of the Board, shall constitute the record in the appeal.

Powers of court

(3) An appeal under this section may be made on questions of law or fact or both and the court may affirm or reverse the decision or order of the Board or direct the Board to make any decision or order that the Board is authorized to make under this Act and the court may substitute its opinion for that of the Board.

Register of experts

13.—(1) The Board shall maintain a register of physicians and dentists who have consented to give independent medical and dental advice to the public and to appear as expert witnesses at a hearing before the Board.

Registrar, etc.

(2) The Lieutenant Governor in Council may appoint a registrar and such other clerks as are required by the Board to maintain the register referred to in subsection 1 and they shall maintain the register as required by the Board.

(3) The register referred to in subsection 1 shall be available to any person during the normal business hours of the Board.

14. This Act comes into force on the day it receives Royal Assent.

15. This Act may be cited as *The Medical Complaints Procedures Act, 1974*.

The Medical Complaints
Procedures Act

1st Reading

March 6th, 1974

2nd Reading

3rd Reading

MR. SINGER

(*Private Member's Bill*)

Ontario - Legislative Assembly

Government
Publication

CAZON

BILL 5

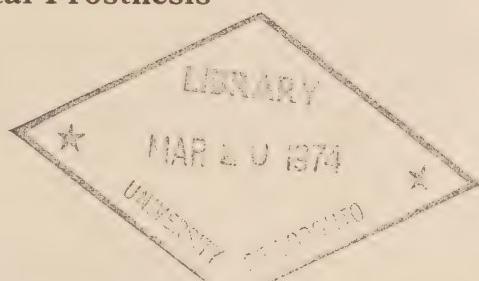
Private Member's Bill

XB

-B 56

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

An Act to provide for the
Practice of Dental Prosthesis



MR. NIXON (Brant)

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The purpose of this Bill is to allow denturists to take impressions, construct and fit complete upper, lower and partial dentures, dealing directly with the public.

BILL 5**1974**

**An Act to provide for the
Practice of Dental Prostheses**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) “Board” means the Denturist Licensing Board established under section 7;
- (b) “dental prosthesis” means,
 - (i) the repairing, relining or rebasing of any complete upper or complete lower denture or any removable partial denture, and
 - (ii) the taking of impressions, bite registrations, tryins, or insertions for the making, producing, construction, furnishing, supplying or fitting of any complete upper or complete lower artificial denture or any upper or lower removable partial denture for the intended wearer thereof;
- (c) “denturist” means a person licensed under this Act to engage in the practice of dental prosthesis;
- (d) “incompetence” means the display of a lack of knowledge, skill or judgment in the professional care of a patient or disregard for the welfare of a patient of a nature or to an extent that demonstrates that the denturist is unfit to continue in the practice of dental prosthesis;
- (e) “Member” means a member of the Denturist Society of Ontario;
- (f) “Minister” means the Minister of Health;
- (g) “professional misconduct” means professional misconduct as defined in the regulations;

- (h) "Registrar" means the Registrar of the Denturist Licensing Board appointed under section 3;
- (i) "regulations" means the regulations made under this Act.

Administration of Act

2. The Minister of Health is responsible for the administration of this Act.

Registrar of Denturist Licensing Board

3. There shall be a Registrar of the Denturist Licensing Board who shall be appointed by the Board with the approval of the Lieutenant Governor in Council.

Practice of dental prosthesis

4. No person, other than a dental surgeon or a person licensed under this Act as a denturist, shall engage in or hold himself out as qualified or entitled to engage in the practice of dental prosthesis, or take or use any name, title, addition or description representing or implying that he is the holder of a licence to practise dental prosthesis.

Issuance of licence

5.—(1) An applicant for a licence as a denturist is entitled to be issued a licence by the Registrar except where,

- (a) the applicant does not have the educational qualifications or experience required by the regulations or fails to pass the examinations set by the Board;
- (b) the past conduct of the applicant affords reasonable grounds for belief that he will not carry on his practice with integrity and honesty.

Conditions of licence

(2) A licence is subject to such terms and conditions as are consented to by the applicant, imposed by the Board or prescribed by the regulations.

Expiry

(3) A licence expires one year after its issue or renewal.

Refusal to issue, etc.

6.—(1) Subject to section 8, the Registrar may refuse to issue or renew a licence to an applicant where in the Registrar's opinion the applicant is not entitled to a licence under section 5.

Suspension or revocation

(2) Subject to section 8, the Registrar may suspend or revoke a licence,

- (a) for any reason that would disentitle the licensee to be issued a licence under section 5 if he were an applicant;
- (b) where the licensee is in breach of a term or condition of his licence;

- (c) where the licensee is in contravention of this Act or the regulations; or
- (d) where the licensee has been guilty of professional misconduct or incompetence.

7.—(1) There shall be a board to be known as the Denturist ^{Denturist Licensing} Board composed of persons appointed by the Lieutenant Governor in Council, one of whom shall be designated by the Lieutenant Governor in Council as chairman.

(2) The Board shall be composed of,

Composition
of Board

- (a) two persons representing the public interest;
- (b) one dental surgeon who is a member of The Royal College of Dental Surgeons of Ontario;
- (c) four Members who shall be nominated by the Denturist Society of Ontario.

(3) The appointment of a nominee of the Denturist Society ^{Idem} of Ontario shall terminate if such nominee fails to become licensed as a denturist at the earliest opportunity after such appointment, or if the licence of such nominee is suspended or revoked.

(4) Four members of the Board constitute a quorum, at ^{Quorum} least one of whom shall be a member appointed to represent the public interest.

(5) Such officers and employees as are considered necessary ^{Staff} for the carrying out of the duties of the Board may be appointed under *The Public Service Act.*

R.S.O. 1970,
c. 386

(6) The Board shall,

Duties
of Board

- (a) conduct the hearings and proceedings under section 8;
- (b) review the operation of this Act and the regulations and make recommendations to the Minister thereon;
- (c) establish, with the approval of the Lieutenant Governor in Council, a course or courses of study for the purpose of qualifying persons in dental prosthesis;
- (d) set or approve examinations for the qualification of applicants for licences;
- (e) perform such other duties as are assigned to it by this Act or the regulations or by any other Act.

Notice of proposal to refuse or revoke

8.—(1) Where the Registrar proposes to refuse to issue a licence or renew a licence or proposes to suspend or revoke a licence, he shall serve notice of his proposal, together with written reasons therefor on the applicant or licensee.

Notice requiring hearing

(2) A notice under subsection 1 shall inform the applicant or licensee that he is entitled to a hearing by the Board if he mails or delivers, within fifteen days after the notice under subsection 1 is served on him, notice in writing requiring a hearing to the Registrar and the Board, and he may so require such a hearing.

Powers of Registrar where no hearing

(3) Where an applicant or licensee does not require a hearing by the Board in accordance with subsection 2, the Registrar may carry out the proposal stated in his notice under subsection 1.

Powers of Board

(4) Where an applicant or licensee requires a hearing by the Board in accordance with subsection 2, the Board shall appoint a time for and hold the hearing and, on the application of the Registrar at the hearing, may by order direct the Registrar to carry out his proposal or refrain from carrying out his proposal and to take such actions as the Board considers the Registrar ought to take in accordance with this Act and the regulations, and for such purposes the Board may substitute its opinion for that of the Registrar.

Conditions of order

(5) The Board may attach such terms and conditions to its order or to the licence as it considers proper to give effect to the purposes of this Act.

Extension of times

(6) The Board may extend the time for the giving of notice requiring a hearing by an applicant or licensee under this section either before or after the expiration of such time where it is satisfied that there are *prima facie* grounds for granting relief to the applicant or licensee pursuant to a hearing and that there are reasonable grounds for applying for the extension, and the Board may give such directions as it considers proper consequent upon the extension.

Continuation of licence pending renewal

(7) Where before expiry of his licence, a licensee has applied for renewal of his licence and paid the prescribed fee, his licence shall be deemed to continue,

(a) until the renewal is granted; or

(b) where he is served with notice that the Registrar proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing by the Board has expired and, where a hearing is required, until the Board has made its decision.

9.—(1) The Registrar, the applicant or licensee who has^{Parties} required the hearing and such other persons as the Board may specify are parties to proceedings before the Board under this Act.

(2) Notice of hearing under section 8 shall afford the^{Notice of hearing} applicant or licensee a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the issue or retention of the licence.

(3) An applicant or licensee who is a party to proceedings^{Examination of documentary evidence} under section 8 shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

(4) Members of the Board holding a hearing shall not have^{Members holding hearing not to have taken part in investigation, etc.} taken part before the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the Board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

(5) The oral evidence taken before the Board at a hearing^{Recording of evidence} shall be recorded and, if so required, copies of a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

(6) The findings of fact of the Board pursuant to a hearing^{Findings of fact} shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of *The Statutory Powers Procedure Act, 1971*, c. 47.

(7) No member of the Board shall participate in a decision^{Only members at hearings to participate in decision} of the Board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision.

(8) Documents and things put in evidence at the hearing^{Release of documentary evidence} shall, upon the request of the person who produced them, be released to him by the Board within a reasonable time after the matter in issue has been finally determined.

Appeal to
Court

10.—(1) Any party to the hearing before the Board may appeal from the decision of the Board to the Supreme Court in accordance with the rules of court.

Minister
entitled to
be heard

(2) The Minister is entitled to be heard by counsel or otherwise upon the argument of an appeal under this section.

Record to
be filed
in court

(3) The Board shall certify to the Registrar of the Supreme Court the record of the proceedings before the Board which, together with a transcript of the evidence before the Board, if it is not part of the Board's record, shall constitute the record in the appeal.

Powers of
court on
appeal

(4) An appeal under this section may be made on questions of law or fact or both and the court may confirm or alter the decision of the Board or direct the Registrar to do any act he is authorized to do under this Act or may refer the matter back to the Board for reconsideration by the Board as the court considers proper and the court may substitute its opinion for that of the Registrar or the Board.

No stay
on appeal

(5) Notwithstanding that an applicant or licensee has appealed under this section from a decision of the Board, unless the Board otherwise directs, the decision of the Board is effective until the appeal is disposed of.

Service
of notice

11.—(1) Except where otherwise provided, any notice required by this Act to be served may be served personally or by registered mail addressed to the person to whom notice is to be given at his latest known address and, where notice is served by registered mail, the service shall be deemed to have been made on the third day after the day of mailing unless the person to whom notice is given establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice until a later date.

Idem

(2) Notwithstanding subsection 1, the Board may order any other method of service in respect of any matter before the Board.

Immunity
from civil
liability

12. No action or other proceeding for damages shall be instituted against the Registrar, the Board or any member of the Board or anyone acting under the authority of such Registrar, Board or member, for any act done in good faith in the execution or intended execution of his duty or for any alleged neglect or default in the execution in good faith of his duty.

13. No denturist is liable to any action for negligence or malpractice, by reason of professional services requested or rendered, unless such action is commenced within six months from the date when, in the matter complained of, such professional services terminated.

14.—(1) No denturist shall practise dental prosthesis except in,

- (a) premises approved by the Board as premises within which the denturist may practise dental prosthesis;
- (b) the offices of a dental surgeon or dental clinic; or
- (c) such other place, such as a hospital, home for the aged or private residence in instances where the person requiring the services of such denturist is not reasonably able to attend at such approved premises or the offices of a dental surgeon or a dental clinic.

(2) No licensed denturist shall perform any act in the practice of dentistry except within the scope of the practice of dental prosthesis.

15. No denturist shall,

Use of equipment

- (a) own or operate X-ray equipment; or
- (b) own or operate tools or equipment ordinarily used by a dentist for drilling or extracting teeth; or
- (c) treat or provide medication for the treatment of any disease of the oral cavity.

16.—(1) Every person who,

Offences

- (a) knowingly, furnishes false information in any application under this Act or in any statement or return required to be furnished under this Act or the regulations; or
- (b) contravenes any provision of this Act or the regulations,

is guilty of an offence and on summary conviction is liable to a fine of not more than \$500.

(2) No proceedings under clause *a* of subsection 1 shall be commenced more than one year after the facts upon which the proceeding is based first came to the knowledge of the Registrar.

Idem

(3) No proceedings under clause *b* of subsection 1 shall be commenced more than two years after the time when the subject-matter of the proceeding arose.

Restraining order

(4) Where any person has been convicted of an offence under this Act on two or more occasions, the Board may apply to the Supreme Court for an order directing such person to comply with any provisions of this Act, and upon the application, the judge may make such order as the judge thinks fit and an appeal lies to the Court of Appeal from an order made under this subsection.

Certificate as evidence

17. A statement as to,

- (a) the licensing or non-licensing of any person;
- (b) the filing or non-filing of any document or material required or permitted to be filed with the Registrar;
- (c) the time when the facts upon which proceedings are based first came to the knowledge of the Registrar; or
- (d) any other matter pertaining to such licensing, non-licensing, filing or non-filing,

purporting to be certified by the Registrar is, without proof of the office or signature of the Registrar, receivable in evidence as *prima facie* proof of the facts stated therein for all purposes in any action, proceeding or prosecution.

Regulations

18. The Lieutenant Governor in Council may make regulations,

- (a) governing the manner in which denturists conduct their practice and business affairs;
- (b) requiring the certificate of a dental surgeon or a legally qualified medical practitioner as to oral health as a condition to the performance of services in the practice of dental prosthesis;
- (c) defining professional misconduct;
- (d) prescribing the manner in which denturists may describe themselves and their practice;
- (e) prescribing fees to be charged by a denturist for services rendered in the practice of dental prosthesis and providing for a discount of the prescribed fee of

33½ per cent when such services are rendered to a person who receives old age security payments or disability allowance;

- (f) governing applications for and issuing of licences to engage in the practice of dental prosthesis and renewals thereof and prescribing terms and conditions of licences;
- (g) requiring the payment of fees on applications for licences and renewals and for the taking of examinations and prescribing the amounts thereof;
- (h) prescribing the qualifications of applicants for licences and renewals and providing for the holding of oral and written examinations set or approved by the Board;
- (i) prescribing procedures that may be performed as incidental to the practice of dental prosthesis;
- (j) requiring licensed denturists to make returns and furnish information to the Registrar;
- (k) requiring any information required to be furnished or contained in any form or return to be verified by affidavit;
- (l) prescribing forms for the purposes of this Act and providing for their use;
- (m) prescribing further procedures respecting matters coming before the Board;
- (n) assigning additional duties to the Board;
- (o) defining the term commercial dental laboratory and prohibiting a denturist from having any proprietary interest therein.

19. *The Denture Therapists Act, 1972*, being chapter 163,<sup>1972, c. 163,
repealed</sup> is repealed.

20. This Act comes into force on a day to be named by ^{Commencement} proclamation of the Lieutenant Governor.

21. This Act may be cited as *The Denturist Act, 1974*. ^{Short title}

An Act to provide for the
Practice of Dental Prosthesis

1st Reading

March 7th, 1974

2nd Reading

3rd Reading

MR. NIXON (Brant)

(*Private Member's Bill*)

XB
-B 56

BILL 6

Government Publications
Government Bill

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

An Act to amend The Milk Act

THE HON. W. A. STEWART
Minister of Agriculture and Food



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTES

SECTION 1. The amendment repeals two redundant subsections and re-enacts a power formerly contained in section 4 of the Act.

SECTION 2. Self-explanatory.

BILL 6

1974

An Act to amend The Milk Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsections 4 and 5 of section 4 of *The Milk Act*, being chapter 273 of the Revised Statutes of Ontario, 1970, are repealed and the following substituted therefor:

(4) The Commission may, upon any inquiry, investigation or arbitration under clause *a* or *b* of subsection 2, order the payment by any person engaged in producing, processing or marketing milk or milk products, to any other person engaged therein, of moneys, in an amount to be fixed by the Commission, that are payable to such other person by reason of a failure on the part of the person to whom the order is directed to fulfil any obligation imposed upon him by or under this Act or any regulation, plan, award or agreement or by any order or direction of the Commission or a marketing board.

2. The said Act is amended by adding thereto the following section:

12b.—(1) Every person engaged in the producing, processing or marketing of milk or milk products, when requested so to do by a field-man appointed for the exercise of the powers and the performance of the duties of the Director, shall, in respect of milk and milk products, produce his books, records and documents and permit inspection thereof and furnish copies thereof or extracts therefrom and permit inspection of his premises and any equipment, milk or milk products therein.

(2) No person shall hinder or obstruct an officer or field-man mentioned in subsection 1 in the course of his duties, furnish him with false information or refuse to furnish him with information.

Certificate
of appoint-
ment of
field-man

(3) The production by a field-man mentioned in subsection 1 of a certificate of his appointment purporting to be signed by the Director shall be accepted by any person engaged in the producing, processing or marketing of milk or milk products as proof of such appointment.

s. 21,
amended

3. Section 21 of the said Act is amended by inserting after "Commission" in the sixth line "the Director or a marketing board".

Commence-
ment

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. This Act may be cited as *The Milk Amendment Act, 1974.*

SECTION 3. The authority to apply for an injunction is extended to the Director and a marketing board.

BILL 6

An Act to amend
The Milk Act

1st Reading

March 7th, 1974

2nd Reading

3rd Reading

THE HON. W. A. STEWART
Minister of Agriculture and Food

(*Government Bill*)

CAZUN
XB
-B 56

Government
Publications

BILL 6

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

An Act to amend The Milk Act

THE HON. W. A. STEWART
Minister of Agriculture and Food



TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

BILL 6**1974****An Act to amend The Milk Act**

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Certificate
of appoint-
ment of
field-man

(3) The production by a field-man mentioned in subsection 1 of a certificate of his appointment purporting to be signed by the Director shall be accepted by any person engaged in the producing, processing or marketing of milk or milk products as proof of such appointment.

s. 21,
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3. Section 21 of the said Act is amended by inserting after "Commission" in the sixth line "the Director or a marketing board".

Commence-
ment

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. This Act may be cited as *The Milk Amendment Act, 1974.*

BILL 0

An Act to amend
The Milk Act

1st Reading

March 7th, 1974

2nd Reading

June 11th, 1974

3rd Reading

June 11th, 1974

THE HON. W. A. STEWART
Minister of Agriculture and Food

CAZUN
XB
-B 56

Government
Publications

BILL 7

Government Bill

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

The Developmental Services Act, 1974

THE HON. R. BRUNELLE
Minister of Community and Social Services



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTES

The purpose of the Bill is to transfer administrative responsibility for facilities for mentally retarded persons from the Ministry of Health to the Ministry of Community and Social Services.

Some features of the Bill are as follows:

- (1) The Minister may establish and maintain facilities in order to provide for residential care and may purchase assistance and services for persons with a developmental handicap.
- (2) The Lieutenant Governor in Council may appoint a board of governors to maintain and operate any facility established by the Minister.
- (3) Certain premises designated as psychiatric facilities under *The Mental Health Act* are deemed to be discontinued as psychiatric facilities and are continued as facilities for persons with a developmental handicap.
- (4) Provision is made for the automatic discharge of persons who are patients in psychiatric facilities which are being transferred and for their admission as residents in facilities under this Act.
- (5) Part III of *The Mental Health Act* is re-engrossed in order to have the Public Trustee act as committee of the estate of a person who is incapable of managing his own affairs.
- (6) Provision is made for the payment of grants to or for the benefit of persons with a developmental handicap or to any facility or class of facility in which a person with a developmental handicap resides.

BILL 7**1974****The Developmental Services Act, 1974**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,Interpre-
tation

- (a) “administrator” means the person who is responsible for the operation and management of a facility;
- (b) “attending physician” means the physician to whom responsibility for the observation, care and treatment of a resident has been assigned;
- (c) “developmental handicap” means a condition of mental impairment present or occurring during a person’s formative years, that is associated with limitations in adaptive behaviour;
- (d) “Director” means a person appointed as such, for all or any of the purposes of this Act;
- (e) “facility” means any place designated by the regulations in which assistance and services or either of them are provided for persons with a developmental handicap;
- (f) “Minister” means the Minister of Community and Social Services;
- (g) “Ministry” means the Ministry of Community and Social Services;
- (h) “physician” means a legally qualified medical practitioner;
- (i) “regulations” means the regulations made under this Act; and

(j) "resident" means a person with a developmental handicap who resides in a facility.

Facilities established **2.**—(1) The Minister may establish, operate and maintain one or more facilities and may furnish such services and assistance as he considers necessary upon such terms and conditions as he sees fit.

Purchase of assistance and services (2) The Minister may by written agreement or otherwise purchase from any person, services and assistance for or on behalf of persons with a developmental handicap or believed to have a developmental handicap and may direct payment of expenditures as are necessary for these purposes.

Administration vested in Director **3.**—(1) Except where a board has been appointed under subsection 2, the administration of every facility established, or operated by the Minister, is vested in the Director.

Board of governors appointed (2) The Lieutenant Governor in Council may appoint a board of governors to maintain and operate any facility operated and maintained under subsection 1 of section 2, and every such board is a body corporate.

R.S.O. 1970, c. 89, not to apply (3) *The Corporations Act* does not apply to a board appointed under subsection 2.

Administrator to superintend (4) Subject to subsection 1, the administrator shall superintend the operation and management of all the affairs of the facility for which he is appointed and shall supervise all officers, clerks, employees and all the residents therein.

Minister, Director or administrator may appoint persons (5) Where this Act or the regulations require or authorize the Minister, Director or administrator to do any act, such act may be done by any person whom the Minister, Director or administrator, as the case may be, appoints.

Patients deemed discharged R.S.O. 1970, c. 269 **4.**—(1) Every person with a developmental handicap who on the 1st day of April, 1974 resides in a psychiatric facility under the regulations to *The Mental Health Act* shall, upon the designating of all or any part of the psychiatric facility as a facility under this Act, be deemed to have been discharged as a patient under the provisions of *The Mental Health Act* and admitted as a resident pursuant to the provisions of this Act.

Certificate of incompetence deemed issued and received (2) Where the Public Trustee was committee of the estate of a person who is deemed to have been discharged under subsection 1, a certificate of incompetence shall be deemed to have been issued under subsection 3 of section 10 and received by the Public Trustee.

5. Any premises or part or parts thereof which were designated as a psychiatric facility under the regulations to *The Mental Health Act*, and which were operated by the Minister of Health shall, upon being designated as a facility under this Act, be operated and maintained by the Minister and the administration thereof shall, subject to subsection 2 of section 3, vest in the Director. Designated facilities
The vest in
Director
R.S.O. 1970,
c. 269

6. Where a facility was incorporated under another Act and is designated under this Act, the designation shall not be deemed to affect the continuation of the facility's status as a corporation. Corporate status
continued

7. Any person who,

Persons
may apply
for admission
to facilities

(a) believes he is a person with a developmental handicap; or

(b) wishes to apply on behalf of a person whom he believes is a person with a developmental handicap,

may apply for admission to a facility or for any item of assistance or service which the Minister may make available to persons with a developmental handicap.

8.—(1) No action, prosecution or other proceeding for damages for anything done or omitted to be done in pursuance or intended pursuance of this Act or the regulations shall be commenced against the Director, a Board appointed under subsection 2 of section 3 or any officer or employee of a facility for any act done in good faith in the execution or intended execution of his or its duty or for any alleged neglect or default in the execution in good faith of his or its duty. Protection
from
personal
liability

(2) Subsection 1 does not, by reason of subsections 2 and 4 of section 5 of *The Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by an agent or servant of the Crown to which it would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection 1 had not been enacted. Crown not
relieved of
liability
R.S.O. 1970,
c. 365

9. No action lies against the Director or any officer or employee of a facility for any tort of any resident. Protection
from tort
liability
re resident

10.—(1) Forthwith upon the admission of a resident to a facility, he shall be examined by a physician to determine whether he is competent to manage his estate. Examination
as to
competency,
upon
admission

**Idem,
at any time** (2) The attending physician may examine a resident at any time to determine whether he is competent to manage his estate.

**Certificate
of in-
competence** (3) If, after an examination under subsection 1 or 2, the examining physician is of the opinion that the resident is not competent to manage his estate, he shall issue a certificate of incompetence in the prescribed form and the administrator shall forward the certificate to the Public Trustee.

**Idem,
exceptional
circum-
stances** (4) Where circumstances are such that the Public Trustee should immediately assume management of an estate, the administrator shall notify the Public Trustee forthwith that a certificate of incompetence has been issued.

**Appointment
by resident** (5) Notwithstanding that no certificate of incompetence has been issued in his case, a resident may, at any time, in writing signed and sealed by him, appoint the Public Trustee as committee of his estate while he is a resident in a facility, and any such appointment may be revoked by the resident at any time in writing signed and sealed by him.

**Where Public
Trustee is
committee
at time of
admission
of resident** (6) Where the Public Trustee is committee of a person with a developmental handicap or believed to have a developmental handicap at the time of his admission to a facility, a certificate of incompetence shall be deemed to have been issued and forwarded to the Public Trustee under subsection 3.

**Where section
does not apply
R.S.O. 1970,
c. 271** (7) This section does not apply to a resident whose estate is under committeeship under *The Mental Incompetency Act*.

**Where Public
Trustee may
replace
committee
appointed
under
R.S.O. 1970,
c. 271** **11.—(1)** Notwithstanding that under *The Mental Incompetency Act* a person other than the Public Trustee has been appointed as the committee of the estate of a resident, the Supreme Court may at any time upon the application of the Public Trustee appoint him as committee in the stead of the person appointed under that Act, and on appointment the Public Trustee has and may exercise all the rights and powers conferred upon him by this Act with regard to the management of estates.

**Duty of
Public
Trustee
where
committee
appointed
under
R.S.O. 1970,
c. 271** (2) If at any time a committee of the estate of a resident is appointed under *The Mental Incompetency Act*, the Public Trustee thereupon ceases to be committee and shall account for and transfer to the committee so appointed the estate of the resident that has come into his hands.

**Consent of
Public
Trustee
to order** (3) An order shall not be made under *The Mental Incompetency Act* for the appointment of a committee of a resident

without the consent of the Public Trustee unless seven days notice of the application has been given to him.

(4) The acts of the Public Trustee while committee of a resident are not rendered invalid by the making of an order appointing another committee. Acts of Public Trustee not affected

12. The Public Trustee is committee of the estate of a resident and shall assume management thereof, Where Public Trustee committee

- (a) upon receipt of a certificate of incompetence;
- (b) upon receipt of notice under subsection 4 of section 10; or
- (c) upon receipt of an appointment under subsection 5 of section 10.

13. Upon the Public Trustee becoming committee of the estate of a resident, the administrator shall forthwith forward a statement of the financial affairs of the resident to the Public Trustee. Financial statement

14. The attending physician may, after examining a resident for that purpose, cancel the resident's certificate of incompetence, and in such case the administrator shall forward a notice of cancellation in the prescribed form to the Public Trustee. Cancellation of certificate of incompetence

15.—(1) A resident who is about to be discharged from a facility and whose estate is being managed by the Public Trustee shall be examined by his attending physician to determine whether or not he will, upon discharge, be competent to manage his estate. Examination as to competency before discharge

(2) Where the attending physician is of the opinion, after the examination referred to in subsection 1, that the resident will not, upon discharge, be competent to manage his estate, he shall issue a notice of continuance in the prescribed form and the administrator shall forward the notice to the Public Trustee. Notice of continuance

16. The Public Trustee ceases to be committee of the estate of a resident and shall relinquish management thereof, Where Public Trustee ceases to be committee

- (a) upon receipt of notice of cancellation of the certificate of incompetence of the resident;
- (b) upon receipt of a revocation in writing, signed and sealed by the resident, of an appointment referred to in subsection 5 of section 10;

(c) upon receipt of notice of discharge of the resident, unless he has at that time received a notice of continuance; or

(d) upon the expiration of three months after the resident's discharge, where a notice of continuance was received.

Application to county or district court as to competency **17.**—(1) Where a certificate of incompetence or a notice of continuance has been issued, the resident or any person acting on his behalf, may apply to the county or district court of the county or district in which the resident resides at the time of the application for a review of the decision.

Application by originating notice of motion (2) The application shall be made by originating notice of motion.

Service and practice (3) The notice of motion shall be served upon,

- (a) the Minister; and
- (b) the administrator of the facility in which the resident resides,

and the practice and procedure of the court pertaining to applications by originating notice of motion applies, so far as it is applicable, to an application under this section, except as otherwise provided by this section.

Further evidence (4) In addition to the evidence adduced by affidavit, the court may direct such further evidence to be given as it considers necessary.

Court may affirm or rescind decision (5) On a review under this section, the court may affirm the decision of the person issuing the certificate of incompetence or may rescind it or refer the matter back to the administrator to be disposed of in accordance with such directions as the court considers proper under this Act and the regulations, and the administrator shall give effect to any direction given by the court under this section.

Leave of judge to bring action **18.** No person, other than the Public Trustee, shall bring an action as next friend of a person of whose estate the Public Trustee is committee under this Act without the leave of a judge of the court in which the action is intended to be brought, and the Public Trustee shall be served with notice of the application for such leave.

Service of documents **19.** When an action or proceeding is brought or taken against a resident in a facility for whom a committee has not been appointed by the court and such action or proceeding

is in connection with the estate of such person, the writ or other document by which the proceedings are commenced and any other document requiring personal service shall be served upon the Public Trustee endorsed with a written statement of the name of the facility in which the resident is located, and shall also be served upon the resident, unless in the opinion of the attending physician personal service upon the resident would cause serious harm to him by reason of his developmental handicap, in which case it shall also be served upon the administrator.

20. The Public Trustee as committee of a resident has Rights and powers of Public Trustee as committee
and may exercise all the rights and powers with regard to the estate of the resident that the resident would have if committee of full age and of sound and disposing mind.

21. A person of whose estate the Public Trustee is committee under this Act and his heirs, executors, administrators, next of kin, legatees, devisees and assigns shall have the same interest in any money or other property, real or personal, arising from a sale, mortgage, exchange or other disposition by the Public Trustee acting as such committee as they would have had in the property the subject of the sale, mortgage, exchange or other disposition if no sale, mortgage, exchange or other disposition had been made, and the surplus money or property shall be of the same nature as the property sold, mortgaged, exchanged or disposed of. Nature of proceeds of sale, etc.

22. Upon the Public Trustee becoming committee of the estate of a person under this Act, every power of attorney When powers of attorney void of such person is void.

23. Any recital in a lease, mortgage or conveyance that Recitals in documents a person is a resident in a facility and that the Public Trustee is his committee is admissible in evidence as *prima facie* proof of the facts recited.

24. The Powers conferred upon the Public Trustee as committee of the estate of a resident may be exercised, Purposes for which powers of Public Trustee may be exercised

(a) until the committeeship is terminated notwithstanding that the resident has been discharged from the facility;

(b) to carry out and complete any transaction entered into by the resident before he became a resident in a facility;

(c) to carry out and complete any transaction entered into by the committee notwithstanding that the

committeeship has been terminated or that the resident has died after the transaction was commenced.

Lien of
Public
Trustee for
costs, etc.

25.—(1) The costs, charges and expenses of the Public Trustee, including the costs, charges and expenses of or arising from or out of the passing of his accounts, whether before or after the termination of the committeeship or the death of the person of whose estate he is committee under this Act, and any moneys advanced or liability incurred by him for or on behalf of such person or for the maintenance of such person's family are a lien upon the real and personal property of such person.

Notice of
lien in case
of real
property

(2) In the case of real property, the Public Trustee may register in the proper land registry office a certificate under his hand and seal of office giving notice of the lien claimed and the real property against which it is claimed.

Withholding
of moneys to
secure costs

(3) Where the Public Trustee is proceeding to have his accounts passed after the termination of the committeeship or the death of a person referred to in subsection 1, the Public Trustee may withhold sufficient moneys from the person's estate to adequately secure the costs of or arising from or out of the passing of such accounts.

When gifts,
etc., deemed
fraudulent

26. Every gift, grant, alienation, conveyance or transfer of property made by a person who is or becomes a resident shall be deemed to be fraudulent and void as against the Public Trustee if the same was not made for full and valuable consideration actually paid or sufficiently secured to such person or if the purchaser or transferee had notice of his mental incompetence.

Death of
resident

27. Upon the death of a resident and until letters probate of the will or letters of administration to the estate of the resident are granted to a person other than the Public Trustee and notice thereof is given to the Public Trustee, the Public Trustee may continue to manage the estate and exercise with respect thereto the powers that an executor would have if the property were devised or bequeathed to him in trust for payment of debts and distribution of the residue.

Passing of
accounts

28. The Public Trustee is liable to render an account as to the manner in which he has managed the property of the resident in the same way and subject to the same responsibility as any trustee, guardian or committee duly appointed for a similar purpose may be called upon to account, and is entitled from time to time to bring in

and pass his accounts and tax costs in like manner as a trustee but is personally liable only for wilful misconduct.

29. For the services rendered by the Public Trustee as committee of a resident, he may be allowed compensation not exceeding the amount that a trustee would be allowed for like services, but in cases of poverty or hardship the Public Trustee may forego any claim for compensation.

30.—(1) Where a person with respect to whom a notice of continuance has been received by the Public Trustee may not, based upon a report of the attending physician or other evidence available to the Public Trustee, be competent to manage his estate upon the termination of the committeeship or a person discharged has refused or neglected to take his property or any part thereof from the Public Trustee, the Public Trustee may apply to the Supreme Court for directions as to the disposal of such property, and the court may make such order as it considers just, and may in its discretion order that the Public Trustee continue to manage the estate of such person with all the rights and powers that the Public Trustee would have had under this Act if the committeeship had not been terminated.

(2) Where the Public Trustee continues to manage an estate under subsection 1, the Supreme Court may, upon application, make such further order as it considers just and may, in its discretion, order that the management of the estate by the Public Trustee be relinquished.

31. The Public Trustee shall, out of the money in his hands belonging to a resident for whom he is committee, pay the proper charges for his maintenance in the facility in which he is a resident, and he may also pay such sums as he considers advisable to the resident's family or other persons dependent upon him, and the payments for the maintenance of the family and other dependants may be made notwithstanding that such payments may prevent the payment of maintenance that otherwise would be due from the resident.

32. If there is any money in court to the credit of a resident, it shall be paid out to the Public Trustee upon his written application, and it is not necessary to obtain an order of the court or a judge for such purpose.

33. Nothing in this Act makes it the duty of the Public Trustee to institute proceedings on behalf of a resident or to intervene in respect of his estate or any part thereof or to take charge of any of his property.

Patients
in another
province with
estate in
Ontario

34.—(1) Where a person who is suffering from a developmental handicap resides in another province or territory of Canada and has estate situate in Ontario, the Lieutenant Governor in Council may appoint the official of the other province or territory who is charged with the duty of managing the estate of such person in the other province or territory to be committee of the estate in Ontario.

Order
conclusive

(2) The order making the appointment is conclusive proof that all the conditions precedent to the appointment have been fulfilled.

Rights and
powers of
appointee

(3) The appointee under such an order possesses the same rights, powers, privileges and immunities as are conferred by this Act upon the Public Trustee and he is subject to the same obligations and shall perform the same duties.

Minister may
designate
officers

35.—(1) The Minister may appoint officers of the Ministry or other persons who shall advise and assist the administrator in all matters pertaining to persons with a developmental handicap and who shall have such other duties as are assigned to them by this Act or the regulations.

Powers

(2) Any such officer or person may at any time, and shall be permitted so to do by the authorities thereat, visit and inspect any facility and, in so doing, may interview residents, examine books, records and other documents relating to residents, examine the condition of the facility and its equipment, inquire into the adequacy of its staff, the range of services provided and any other matter considered relevant to the care of residents by such officer or person.

Inspection

(3) The books of account and any other records of every facility or class of facility shall be open at all reasonable times for inspection by an officer or person appointed under subsection 1.

Provincial
aid

36. The Minister may direct payment of provincial aid to or for the benefit of persons with a developmental handicap, or believed to have a developmental handicap, or to or for any facility or class of facility in which a person with a developmental handicap resides, in such amounts and under such conditions as are prescribed by the regulations.

Moneys

37. The moneys required for the purposes of this Act shall be paid out of moneys that are appropriated therefor by the Legislature.

Regulations

38. The Lieutenant Governor in Council may make regulations,

- (a) designating facilities or classes of facilities to which this Act and the regulations apply and limiting, restricting or exempting any such facility or class of facility from the application of any part of the regulations;
- (b) respecting the construction, renovation, alteration and maintenance of any facility or class of facility;
- (c) respecting the management, conduct, operation, use and control of any facility or class of facility;
- (d) prescribing the accommodation, facilities, equipment and services in any facility or class of facility;
- (e) providing for the officers and staff and prescribing their duties and qualifications in any facility or class of facility;
- (f) prescribing the procedure for selecting and evaluating the site of any facility or class of facility and for the development and preparation of plans for the site and buildings and for the information to be contained in such plans;
- (g) providing for the approval of facilities within a class and prescribing the terms and conditions upon which any such facility may be approved for persons with a developmental handicap;
- (h) for the purposes of this Act and the regulations, defining "assistance" and "services" and prescribing classes of services and classes of assistance and the items, services and payments to be included in any such definition or in any such class of services or class of assistance and prescribing the terms and conditions upon which such services or assistance or any class thereof may be provided;
 - (i) prescribing the classes of grants or allowances by way of provincial aid to or for the benefit of persons with a developmental handicap or believed to have a developmental handicap, or to or for any facility or class of facility and the methods of determining the amounts of such grants or allowances, the terms and conditions for the payment thereof and providing for the manner, times and methods of payment and the suspension and withholding of grants and allowances and for the making of deductions from grants and allowances;

- (j) prescribing the persons or classes of persons who may be eligible for services and assistance or any class thereof and prescribing the terms and conditions of eligibility for services and assistance or any classes thereof requiring information to be submitted and providing for the investigation and determination of eligibility for such services or assistance or any classes thereof;
- (k) prescribing the charges that shall be made for the provision of services and assistance or any class thereof to a person with a developmental handicap or believed to have a developmental handicap and limiting, restricting or exempting the persons or any class of persons to whom such charges shall be made;
- (l) prescribing the persons and authorities or classes of persons or authorities that are liable for or exempted from the cost of services and assistance or any class of services or assistance to persons with a developmental handicap or believed to have a developmental handicap and prescribing rules for determining the amounts to be contributed towards the cost of such services or assistance or class thereof by the person or authority or class of person or authority who are liable therefor;
- (m) providing for the recovery of any sum as a debt due to the Crown or to the board of any facility in any court of competent jurisdiction from any person or his estate or authority liable therefor, of the cost or any part of the cost of any services or assistance or any class thereof provided to or for a person with a developmental handicap or believed to have a developmental handicap;
- (n) providing for an agreement to be entered into with or on behalf of any resident or class of resident in a facility or in any class of facility, for the administrator in charge of the facility or class of facility, to receive, hold and administer real and personal property of the resident or class of resident in trust for certain purposes, and providing for the terms and conditions of trust upon which the administrator may receive and hold such property;
- (o) providing for the establishment of in-service training programs for members of the staff of any facility or class of facility;

- (p) providing for any parent or guardian of a child with a developmental handicap or believed to have a developmental handicap to enter into agreement with the Minister or any child welfare authority appointed by the Minister, for the purposes of providing services or assistance or any class thereof, and providing for the terms and conditions in any such agreement upon which such services or assistance or any class thereof may be provided;
- (q) governing applications for payment of grants or allowances under this Act;
- (r) prescribing the records and accounts to be kept in respect of facilities or class of facilities, the claims and returns to be made to the Minister and the method, time and manner in which such claims and returns are to be made;
- (s) prescribing additional duties of officers or persons appointed by the Minister under section 35;
- (t) respecting the examination of persons and the admission, transfer, discharge and placement of residents;
- (u) prescribing rules governing the operation, management functions and powers of boards appointed by the Lieutenant Governor in Council under subsection 2 of section 3; and
- (v) prescribing forms and providing for their use.

39.—(1) This Act comes into force on the 1st day of April, 1974.

(2) Any regulations made under section 38 and filed ^{Idem} under *The Regulations Act* before the 31st day of December, <sup>R.S.O. 1970,
c. 410</sup> 1974 may be made to apply retroactively to a date not earlier than the 1st day of April, 1974.

40. This Act may be cited as *The Developmental Services Act, 1974.*

The Developmental Services Act, 1974

1st Reading

March 7th, 1974

2nd Reading

3rd Reading

THE HON. R. BRUNELLE
Minister of Community and
Social Services

(*Government Bill*)

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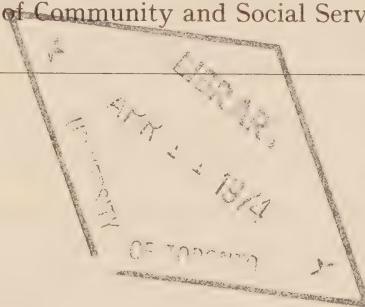
Government
Publications

BILL 7

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

The Developmental Services Act, 1974

THE HON. R. BRUNELLE
Minister of Community and Social Services



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

BILL 7**1974****The Developmental Services Act, 1974**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,Interpre-
tation

- (a) “administrator” means the person who is responsible for the operation and management of a facility;
- (b) “attending physician” means the physician to whom responsibility for the observation, care and treatment of a resident has been assigned;
- (c) “developmental handicap” means a condition of mental impairment present or occurring during a person’s formative years, that is associated with limitations in adaptive behaviour;
- (d) “Director” means a person appointed as such, for all or any of the purposes of this Act;
- (e) “facility” means any place designated by the regulations in which assistance and services or either of them are provided for persons with a developmental handicap;
- (f) “Minister” means the Minister of Community and Social Services;
- (g) “Ministry” means the Ministry of Community and Social Services;
- (h) “physician” means a legally qualified medical practitioner;
- (i) “regulations” means the regulations made under this Act; and

(j) "resident" means a person with a developmental handicap who resides in a facility.

Facilities established

2.—(1) The Minister may establish, operate and maintain one or more facilities and may furnish such services and assistance as he considers necessary upon such terms and conditions as he sees fit.

Purchase of assistance and services

(2) The Minister may by written agreement or otherwise purchase from any person, services and assistance for or on behalf of persons with a developmental handicap or believed to have a developmental handicap and may direct payment of expenditures as are necessary for these purposes.

Administration vested in Director

3.—(1) Except where a board has been appointed under subsection 2, the administration of every facility established, or operated by the Minister, is vested in the Director.

Board of governors appointed

(2) The Lieutenant Governor in Council may appoint a board of governors to maintain and operate any facility operated and maintained under subsection 1 of section 2, and every such board is a body corporate.

R.S.O. 1970, c. 89, not to apply

(3) *The Corporations Act* does not apply to a board appointed under subsection 2.

Administrator to superintend

(4) Subject to subsection 1, the administrator shall superintend the operation and management of all the affairs of the facility for which he is appointed and shall supervise all officers, clerks, employees and all the residents therein.

Minister, Director or administrator may appoint persons

(5) Where this Act or the regulations require or authorize the Minister, Director or administrator to do any act, such act may be done by any person whom the Minister, Director or administrator, as the case may be, appoints.

Patients deemed discharged
R.S.O. 1970, c. 269

4.—(1) Every person with a developmental handicap who on the 1st day of April, 1974 resides in a psychiatric facility under the regulations to *The Mental Health Act* shall, upon the designating of all or any part of the psychiatric facility as a facility under this Act, be deemed to have been discharged as a patient under the provisions of *The Mental Health Act* and admitted as a resident pursuant to the provisions of this Act.

Certificate of incompetence deemed issued and received

(2) Where the Public Trustee was committee of the estate of a person who is deemed to have been discharged under subsection 1, a certificate of incompetence shall be deemed to have been issued under subsection 3 of section 10 and received by the Public Trustee.

5. Any premises or part or parts thereof which were designated as a psychiatric facility under the regulations to *The Mental Health Act*, and which were operated by the Minister of Health shall, upon being designated as a facility under this Act, be operated and maintained by the Minister and the administration thereof shall, subject to subsection 2 of section 3, vest in the Director. Designated facilities
vest in
Director
R.S.O. 1970,
c. 269

6. Where a facility was incorporated under another Act and is designated under this Act, the designation shall not be deemed to affect the continuation of the facility's status as a corporation. Corporate status
continued

7. Any person who,

Persons
may apply
for admission
to facilities

- (a) believes he is a person with a developmental handicap; or
- (b) wishes to apply on behalf of a person whom he believes is a person with a developmental handicap,

may apply for admission to a facility or for any item of assistance or service which the Minister may make available to persons with a developmental handicap.

8.—(1) No action, prosecution or other proceeding for damages for anything done or omitted to be done in pursuance or intended pursuance of this Act or the regulations shall be commenced against the Director, a Board appointed under subsection 2 of section 3 or any officer or employee of a facility for any act done in good faith in the execution or intended execution of his or its duty or for any alleged neglect or default in the execution in good faith of his or its duty. Protection from personal liability

(2) Subsection 1 does not, by reason of subsections 2 and 4 of section 5 of *The Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by an agent or servant of the Crown to which it would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection 1 had not been enacted. Crown not relieved of liability
R.S.O. 1970,
c. 365

9. No action lies against the Director or any officer or employee of a facility for any tort of any resident. Protection from tort liability re resident

10.—(1) Forthwith upon the admission of a resident to a facility, he shall be examined by a physician to determine whether he is competent to manage his estate. Examination as to competency upon admission

Idem, at any time	(2) The attending physician may examine a resident at any time to determine whether he is competent to manage his estate.
Certificate of in- competence	(3) If, after an examination under subsection 1 or 2, the examining physician is of the opinion that the resident is not competent to manage his estate, he shall issue a certificate of incompetence in the prescribed form and the administrator shall forward the certificate to the Public Trustee.
Idem, exceptional circum- stances	(4) Where circumstances are such that the Public Trustee should immediately assume management of an estate, the administrator shall notify the Public Trustee forthwith that a certificate of incompetence has been issued.
Appointment by resident	(5) Notwithstanding that no certificate of incompetence has been issued in his case, a resident may, at any time, in writing signed and sealed by him, appoint the Public Trustee as committee of his estate while he is a resident in a facility, and any such appointment may be revoked by the resident at any time in writing signed and sealed by him.
Where Public Trustee is committee at time of admission of resident	(6) Where the Public Trustee is committee of a person with a developmental handicap or believed to have a developmental handicap at the time of his admission to a facility, a certificate of incompetence shall be deemed to have been issued and forwarded to the Public Trustee under subsection 3.
Where section does not apply R.S.O. 1970, c. 271	(7) This section does not apply to a resident whose estate is under committeeship under <i>The Mental Incompetency Act</i> .
Where Public Trustee may replace committee appointed under R.S.O. 1970, c. 271	11.—(1) Notwithstanding that under <i>The Mental Incompetency Act</i> a person other than the Public Trustee has been appointed as the committee of the estate of a resident, the Supreme Court may at any time upon the application of the Public Trustee appoint him as committee in the stead of the person appointed under that Act, and on appointment the Public Trustee has and may exercise all the rights and powers conferred upon him by this Act with regard to the management of estates.
Duty of Public Trustee where committee appointed under R.S.O. 1970, c. 271	(2) If at any time a committee of the estate of a resident is appointed under <i>The Mental Incompetency Act</i> , the Public Trustee thereupon ceases to be committee and shall account for and transfer to the committee so appointed the estate of the resident that has come into his hands.
Consent of Public Trustee to order	(3) An order shall not be made under <i>The Mental Incompetency Act</i> for the appointment of a committee of a resident

without the consent of the Public Trustee unless seven days notice of the application has been given to him.

(4) The acts of the Public Trustee while committee of a resident are not rendered invalid by the making of an order appointing another committee. Acts of Public Trustee not affected

12. The Public Trustee is committee of the estate of a resident and shall assume management thereof, Where Public Trustee committee

- (a) upon receipt of a certificate of incompetence;
- (b) upon receipt of notice under subsection 4 of section 10; or
- (c) upon receipt of an appointment under subsection 5 of section 10.

13. Upon the Public Trustee becoming committee of the estate of a resident, the administrator shall forthwith forward a statement of the financial affairs of the resident to the Public Trustee. Financial statement

14. The attending physician may, after examining a resident for that purpose, cancel the resident's certificate of incompetence, and in such case the administrator shall forward a notice of cancellation in the prescribed form to the Public Trustee. Cancellation of certificate of incompetence

15.—(1) A resident who is about to be discharged from a facility and whose estate is being managed by the Public Trustee shall be examined by his attending physician to determine whether or not he will, upon discharge, be competent to manage his estate. Examination as to competency before discharge

(2) Where the attending physician is of the opinion, after the examination referred to in subsection 1, that the resident will not, upon discharge, be competent to manage his estate, he shall issue a notice of continuance in the prescribed form and the administrator shall forward the notice to the Public Trustee. Notice of continuance

16. The Public Trustee ceases to be committee of the estate of a resident and shall relinquish management thereof, Where Public Trustee ceases to be committee

- (a) upon receipt of notice of cancellation of the certificate of incompetence of the resident;
- (b) upon receipt of a revocation in writing, signed and sealed by the resident, of an appointment referred to in subsection 5 of section 10;

- (c) upon receipt of notice of discharge of the resident, unless he has at that time received a notice of continuance; or
- (d) upon the expiration of three months after the resident's discharge, where a notice of continuance was received.

Application to county or district court as to competency **17.**—(1) Where a certificate of incompetence or a notice of continuance has been issued, the resident or any person acting on his behalf, may apply to the county or district court of the county or district in which the resident resides at the time of the application for a review of the decision.

Application by originating notice of motion (2) The application shall be made by originating notice of motion.

Service and practice (3) The notice of motion shall be served upon,

- (a) the Minister; and
- (b) the administrator of the facility in which the resident resides,

and the practice and procedure of the court pertaining to applications by originating notice of motion applies, so far as it is applicable, to an application under this section, except as otherwise provided by this section.

Further evidence (4) In addition to the evidence adduced by affidavit, the court may direct such further evidence to be given as it considers necessary.

Court may affirm or rescind decision (5) On a review under this section, the court may affirm the decision of the person issuing the certificate of incompetence or may rescind it or refer the matter back to the administrator to be disposed of in accordance with such directions as the court considers proper under this Act and the regulations, and the administrator shall give effect to any direction given by the court under this section.

Leave of judge to bring action **18.** No person, other than the Public Trustee, shall bring an action as next friend of a person of whose estate the Public Trustee is committee under this Act without the leave of a judge of the court in which the action is intended to be brought, and the Public Trustee shall be served with notice of the application for such leave.

Service of documents **19.** When an action or proceeding is brought or taken against a resident in a facility for whom a committee has not been appointed by the court and such action or proceeding

is in connection with the estate of such person, the writ or other document by which the proceedings are commenced and any other document requiring personal service shall be served upon the Public Trustee endorsed with a written statement of the name of the facility in which the resident is located, and shall also be served upon the resident, unless in the opinion of the attending physician personal service upon the resident would cause serious harm to him by reason of his developmental handicap, in which case it shall also be served upon the administrator.

20. The Public Trustee as committee of a resident has Rights and powers of Public Trustee as committee of full age and of sound and disposing mind.

21. A person of whose estate the Public Trustee is committee under this Act and his heirs, executors, administrators, next of kin, legatees, devisees and assigns shall have the same interest in any money or other property, real or personal, arising from a sale, mortgage, exchange or other disposition by the Public Trustee acting as such committee as they would have had in the property the subject of the sale, mortgage, exchange or other disposition if no sale, mortgage, exchange or other disposition had been made, and the surplus money or property shall be of the same nature as the property sold, mortgaged, exchanged or disposed of.

22. Upon the Public Trustee becoming committee of the estate of a person under this Act, every power of attorney void of such person is void.

23. Any recital in a lease, mortgage or conveyance that a person is a resident in a facility and that the Public Trustee is his committee is admissible in evidence as *prima facie* proof of the facts recited.

24. The Powers conferred upon the Public Trustee as committee of the estate of a resident may be exercised,

(a) until the committee is terminated notwithstanding that the resident has been discharged from the facility;

(b) to carry out and complete any transaction entered into by the resident before he became a resident in a facility;

(c) to carry out and complete any transaction entered into by the committee notwithstanding that the

committeeship has been terminated or that the resident has died after the transaction was commenced.

Lien of
Public
Trustee for
costs, etc.

25.—(1) The costs, charges and expenses of the Public Trustee, including the costs, charges and expenses of or arising from or out of the passing of his accounts, whether before or after the termination of the committeeship or the death of the person of whose estate he is committee under this Act, and any moneys advanced or liability incurred by him for or on behalf of such person or for the maintenance of such person's family are a lien upon the real and personal property of such person.

Notice of
lien in case
of real
property

(2) In the case of real property, the Public Trustee may register in the proper land registry office a certificate under his hand and seal of office giving notice of the lien claimed and the real property against which it is claimed.

Withholding
of moneys to
secure costs

(3) Where the Public Trustee is proceeding to have his accounts passed after the termination of the committeeship or the death of a person referred to in subsection 1, the Public Trustee may withhold sufficient moneys from the person's estate to adequately secure the costs of or arising from or out of the passing of such accounts.

When gifts,
etc., deemed
fraudulent

26. Every gift, grant, alienation, conveyance or transfer of property made by a person who is or becomes a resident shall be deemed to be fraudulent and void as against the Public Trustee if the same was not made for full and valuable consideration actually paid or sufficiently secured to such person or if the purchaser or transferee had notice of his mental incompetence.

Death of
resident

27. Upon the death of a resident and until letters probate of the will or letters of administration to the estate of the resident are granted to a person other than the Public Trustee and notice thereof is given to the Public Trustee, the Public Trustee may continue to manage the estate and exercise with respect thereto the powers that an executor would have if the property were devised or bequeathed to him in trust for payment of debts and distribution of the residue.

Passing of
accounts

28. The Public Trustee is liable to render an account as to the manner in which he has managed the property of the resident in the same way and subject to the same responsibility as any trustee, guardian or committee duly appointed for a similar purpose may be called upon to account, and is entitled from time to time to bring in

and pass his accounts and tax costs in like manner as a trustee but is personally liable only for wilful misconduct.

29. For the services rendered by the Public Trustee as committee of a resident, he may be allowed compensation not exceeding the amount that a trustee would be allowed for like services, but in cases of poverty or hardship the Public Trustee may forego any claim for compensation.

30.—(1) Where a person with respect to whom a notice of continuance has been received by the Public Trustee may not, based upon a report of the attending physician or other evidence available to the Public Trustee, be competent to manage his estate upon the termination of the committeeship or a person discharged has refused or neglected to take his property or any part thereof from the Public Trustee, the Public Trustee may apply to the Supreme Court for directions as to the disposal of such property, and the court may make such order as it considers just, and may in its discretion order that the Public Trustee continue to manage the estate of such person with all the rights and powers that the Public Trustee would have had under this Act if the committeeship had not been terminated.

(2) Where the Public Trustee continues to manage an estate under subsection 1, the Supreme Court may, upon application, make such further order as it considers just and may, in its discretion, order that the management of the estate by the Public Trustee be relinquished.

31. The Public Trustee shall, out of the money in his hands belonging to a resident for whom he is committee, pay the proper charges for his maintenance in the facility in which he is a resident, and he may also pay such sums as he considers advisable to the resident's family or other persons dependent upon him, and the payments for the maintenance of the family and other dependants may be made notwithstanding that such payments may prevent the payment of maintenance that otherwise would be due from the resident.

32. If there is any money in court to the credit of a resident, it shall be paid out to the Public Trustee upon his written application, and it is not necessary to obtain an order of the court or a judge for such purpose.

33. Nothing in this Act makes it the duty of the Public Trustee to institute proceedings on behalf of a resident or to intervene in respect of his estate or any part thereof or to take charge of any of his property.

Patients in another province with estate in Ontario

34.—(1) Where a person who is suffering from a developmental handicap resides in another province or territory of Canada and has estate situate in Ontario, the Lieutenant Governor in Council may appoint the official of the other province or territory who is charged with the duty of managing the estate of such person in the other province or territory to be committee of the estate in Ontario.

Order conclusive

(2) The order making the appointment is conclusive proof that all the conditions precedent to the appointment have been fulfilled.

Rights and powers of appointee

(3) The appointee under such an order possesses the same rights, powers, privileges and immunities as are conferred by this Act upon the Public Trustee and he is subject to the same obligations and shall perform the same duties.

Minister may designate officers

35.—(1) The Minister may appoint officers of the Ministry or other persons who shall advise and assist the administrator in all matters pertaining to persons with a developmental handicap and who shall have such other duties as are assigned to them by this Act or the regulations.

Powers

(2) Any such officer or person may at any time, and shall be permitted so to do by the authorities thereat, visit and inspect any facility and, in so doing, may interview residents, examine books, records and other documents relating to residents, examine the condition of the facility and its equipment, inquire into the adequacy of its staff, the range of services provided and any other matter considered relevant to the care of residents by such officer or person.

Inspection

(3) The books of account and any other records of every facility or class of facility shall be open at all reasonable times for inspection by an officer or person appointed under subsection 1.

Provincial aid

36. The Minister may direct payment of provincial aid to or for the benefit of persons with a developmental handicap, or believed to have a developmental handicap, or to or for any facility or class of facility in which a person with a developmental handicap resides, in such amounts and under such conditions as are prescribed by the regulations.

Moneys

37. The moneys required for the purposes of this Act shall be paid out of moneys that are appropriated therefor by the Legislature.

Regulations

38. The Lieutenant Governor in Council may make regulations,

- (a) designating facilities or classes of facilities to which this Act and the regulations apply and limiting, restricting or exempting any such facility or class of facility from the application of any part of the regulations;
- (b) respecting the construction, renovation, alteration and maintenance of any facility or class of facility;
- (c) respecting the management, conduct, operation, use and control of any facility or class of facility;
- (d) prescribing the accommodation, facilities, equipment and services in any facility or class of facility;
- (e) providing for the officers and staff and prescribing their duties and qualifications in any facility or class of facility;
- (f) prescribing the procedure for selecting and evaluating the site of any facility or class of facility and for the development and preparation of plans for the site and buildings and for the information to be contained in such plans;
- (g) providing for the approval of facilities within a class and prescribing the terms and conditions upon which any such facility may be approved for persons with a developmental handicap;
- (h) for the purposes of this Act and the regulations, defining "assistance" and "services" and prescribing classes of services and classes of assistance and the items, services and payments to be included in any such definition or in any such class of services or class of assistance and prescribing the terms and conditions upon which such services or assistance or any class thereof may be provided;
- (i) prescribing the classes of grants or allowances by way of provincial aid to or for the benefit of persons with a developmental handicap or believed to have a developmental handicap, or to or for any facility or class of facility and the methods of determining the amounts of such grants or allowances, the terms and conditions for the payment thereof and providing for the manner, times and methods of payment and the suspension and withholding of grants and allowances and for the making of deductions from grants and allowances;

- (j) prescribing the persons or classes of persons who may be eligible for services and assistance or any class thereof and prescribing the terms and conditions of eligibility for services and assistance or any classes thereof requiring information to be submitted and providing for the investigation and determination of eligibility for such services or assistance or any classes thereof;
- (k) prescribing the charges that shall be made for the provision of services and assistance or any class thereof to a person with a developmental handicap or believed to have a developmental handicap and limiting, restricting or exempting the persons or any class of persons to whom such charges shall be made;
- (l) prescribing the persons and authorities or classes of persons or authorities that are liable for or exempted from the cost of services and assistance or any class of services or assistance to persons with a developmental handicap or believed to have a developmental handicap and prescribing rules for determining the amounts to be contributed towards the cost of such services or assistance or class thereof by the person or authority or class of person or authority who are liable therefor;
- (m) providing for the recovery of any sum as a debt due to the Crown or to the board of any facility in any court of competent jurisdiction from any person or his estate or authority liable therefor, of the cost or any part of the cost of any services or assistance or any class thereof provided to or for a person with a developmental handicap or believed to have a developmental handicap;
- (n) providing for an agreement to be entered into with or on behalf of any resident or class of resident in a facility or in any class of facility, for the administrator in charge of the facility or class of facility, to receive, hold and administer real and personal property of the resident or class of resident in trust for certain purposes, and providing for the terms and conditions of trust upon which the administrator may receive and hold such property;
- (o) providing for the establishment of in-service training programs for members of the staff of any facility or class of facility;

- (p) providing for any parent or guardian of a child with a developmental handicap or believed to have a developmental handicap to enter into agreement with the Minister or any child welfare authority appointed by the Minister, for the purposes of providing services or assistance or any class thereof, and providing for the terms and conditions in any such agreement upon which such services or assistance or any class thereof may be provided;
- (q) governing applications for payment of grants or allowances under this Act;
- (r) prescribing the records and accounts to be kept in respect of facilities or class of facilities, the claims and returns to be made to the Minister and the method, time and manner in which such claims and returns are to be made;
- (s) prescribing additional duties of officers or persons appointed by the Minister under section 35;
- (t) respecting the examination of persons and the admission, transfer, discharge and placement of residents;
- (u) prescribing rules governing the operation, management functions and powers of boards appointed by the Lieutenant Governor in Council under subsection 2 of section 3; and
- (v) prescribing forms and providing for their use.

39.—(1) This Act comes into force on the 1st day of April, 1974.

(2) Any regulations made under section 38 and filed ^{Idem} under *The Regulations Act* before the 31st day of December, <sup>R.S.O. 1970,
c. 410</sup> 1974 may be made to apply retroactively to a date not earlier than the 1st day of April, 1974.

40. This Act may be cited as *The Developmental Services* ^{Short title} *Act, 1974.*

BILL I

The Developmental Services Act, 1974

1st Reading

March 7th, 1974

2nd Reading

March 26th, 1974

3rd Reading

March 28th, 1974

THE HON. R. BRUNELLE
Minister of Community and
Social Services

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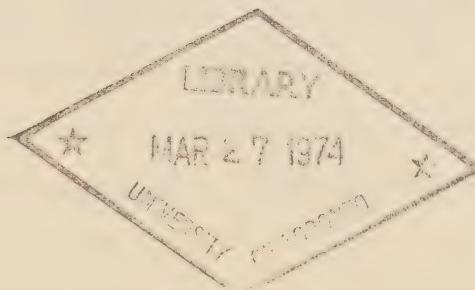
BILL 8

Government Publications

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

An Act to amend The Municipal Act

THE HON. J. WHITE
Treasurer of Ontario and Minister of Economics
and Intergovernmental Affairs



TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The amendments will permit any local municipality to enter into agreement with Ontario in order to promote economic development of the area as contemplated under the Federal-Provincial DREE program, without the necessity of obtaining either the assent of its electors or the approval of the Municipal Board.

BILL 8**1974**

An Act to amend The Municipal Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 of section 293 of *The Municipal Act*, being ^{s. 293(2), amended} chapter 284 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following clause:

(u) agreements respecting regional economic development under paragraph 74a of section 352.

2. Section 352 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 81, section 2, 1972, chapter 124, section 9, and 1973, chapter 83, section 6, is further amended by adding thereto the following paragraph:

74a. For entering into any agreement with Her Majesty in right of Ontario respecting regional economic development and, subject to the approval of the Minister, any ancillary or subsidiary agreements with any person required as a result of entering into such an agreement with Her Majesty.

3. This Act comes into force on the day it receives Royal Assent. ^{Commencement}
4. This Act may be cited as *The Municipal Amendment Act, 1974*. ^{Short title}

An Act to amend
The Municipal Act

1st Reading

March 7th, 1974

2nd Reading

3rd Reading

THE HON. J. WHITE
Treasurer of Ontario and Minister of
Economics and Intergovernmental
Affairs

(*Government Bill*)

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Publications

BILL 8

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

An Act to amend The Municipal Act

THE HON. J. WHITE
Treasurer of Ontario and Minister of Economics
and Intergovernmental Affairs



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

BILL 8**1974**

An Act to amend The Municipal Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 of section 293 of *The Municipal Act*, being chapter 284 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following clause:

(u) agreements respecting regional economic development under paragraph 74a of section 352.

2. Section 352 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 81, section 2, 1972, chapter 124, section 9, and 1973, chapter 83, section 6, is further amended by adding thereto the following paragraph:

74a. For entering into any agreement with Her Majesty in right of Ontario respecting regional economic development and, subject to the approval of the Minister, any ancillary or subsidiary agreements with any person required as a result of entering into such an agreement with Her Majesty.

3. This Act comes into force on the day it receives Royal Assent.
4. This Act may be cited as *The Municipal Amendment Act, 1974*.

An Act to amend
The Municipal Act

1st Reading

March 7th, 1974

2nd Reading

March 15th, 1974

3rd Reading

March 15th, 1974

THE HON. J. WHITE
Treasurer of Ontario and Minister of
Economics and Intergovernmental
Affairs

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See Appendix
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BILL 9

Government
Publications

Government Bill

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

An Act to amend The Ontario Human Rights Code

THE HON. F. GUINDON
Minister of Labour



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTES

SECTION 1. The amendment clarifies the fact that the exception is only in respect of sex and does not include the other bases of discrimination set out in subsection 1.

SECTION 2. The amendment adds age as an exception where age is a *bona fide* occupational qualification and requirement for employment.

SECTION 3. The administrative and enforcement functions formerly carried out by the Ontario Women's Bureau are now carried out by the Commission under this Act.

SECTION 4. The purpose of the amendment is to make provision for the investigation of complaints under the Act rather than provide for formal inquiries at this point in the proceedings.

BILL 9**1974**

**An Act to amend
The Ontario Human Rights Code**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 of section 3 of *The Ontario Human Rights Code*,^{s. 3 (2), re-enacted} being chapter 318 of the Revised Statutes of Ontario, 1970, as re-enacted by the Statutes of Ontario, 1972, chapter 119, section 4, is repealed and the following substituted therefor:
 - (2) The prohibition in subsection 1 in respect of sex^{Exception} does not apply to housing accommodation in a building where the occupancy of all the housing accommodation other than that of the owner or his family is restricted to individuals who are of the same sex.
2. Subsection 6 of section 4 of the said Act, as re-enacted by^{s. 4 (6), re-enacted} the Statutes of Ontario, 1972, chapter 119, section 5, is repealed and the following substituted therefor:
 - (6) The provisions of this section relating to any discrimination, limitation, specification or preference for a position or employment based on age, sex or marital status do not apply where age, sex or marital status is a *bona fide* occupational qualification and requirement for the position or employment.
3. Section 7a of the said Act, as enacted by the Statutes of Ontario, 1972, chapter 119, section 8, is repealed.
4. Section 14 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 50, section 63, and amended by 1972, chapter 119, section 11, is repealed and the following substituted therefor:
 - 14.—(1) Where a complaint has been filed with or initiated by the Commission, the Commission or an officer thereof^{Inquiry and Settlement}

shall inquire into the complaint and endeavour to effect a settlement of the matter complained of.

Powers of
Commission
and officers
of the
Commission

(2) In carrying out an inquiry under subsection 1, the Commission or an officer of the Commission may,

- (a) subject to subsection 3, enter in or upon the lands or premises of a person at any reasonable time without a warrant for the purpose of investigating the complaint;
- (b) require the production for inspection and examination of employment applications, payrolls, records, documents, writings and papers that are or may be relevant to the investigation of the complaint;
- (c) upon giving a receipt therefor, remove any employment applications, payrolls, records, documents, writings and papers mentioned in clause b for the purpose of making copies or extracts of such applications, payrolls, records, documents, writings and papers, but such copying shall be carried on with reasonable dispatch and the applications, payrolls, records, documents, writings and papers shall be promptly thereafter returned and to the premises from which they were removed;
- (d) make any inquiries of any person separate or apart from another person that are or may be relevant to the complaint.

Access to
dwelling

(3) An officer of the Commission shall not enter any room or place actually being used as a dwelling without the consent of the occupier except under the authority of an order issued pursuant to subsection 4.

Order of
justice of
the peace

(4) Where a justice of the peace is satisfied, upon an *ex parte* application by an officer of the Commission, that there is reasonable ground for believing that it is necessary to enter any premises for purposes relevant to an inquiry under this Act, the justice of the peace may issue an order authorizing an officer of the Commission to enter and view such premises for such purposes, but every such entry and viewing shall be made between sunrise and sunset unless the justice of the peace by the order authorizes the officer to make such entry and viewing at night.

Obstruction

(5) No person shall hinder, obstruct, molest or interfere with the Commission or an officer of the Commission in the exercise of a power or the performance of a duty under

this Act or withhold from it or him any employment applications, payrolls, records, documents, writings or papers that are or may be relevant to the investigation of a complaint.

5. This Act comes into force on the day it receives Royal Assent.^{Commencement}
6. This Act may be cited as *The Ontario Human Rights Code*^{Short title} *Amendment Act, 1974.*

BILL

An Act to amend
The Ontario Human Rights Code

1st Reading

March 7th, 1974

2nd Reading

3rd Reading

THE HON. F. GUINDON
Minister of Labour

(*Government Bill*)

CA2ON
XB
-B 56

BILL 9

Government Bill

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

Government
Publications

Ontario. Legislative Assembly

An Act to amend The Ontario Human Rights Code



THE HON. J. MACBETH
Minister of Labour

(Reprinted as amended by the Committee of the Whole House)

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTES

SECTION 1. The amendment clarifies the fact that the exception is only in respect of sex and does not include the other bases of discrimination set out in subsection 1.

SECTION 2. The amendment adds age as an exception where age is a *bona fide* occupational qualification and requirement for employment.

SECTION 3. A pension fund or plan and an insurance plan are exempted from the general prohibition that no person shall discriminate against any employee because of age, sex or marital status. At present such exemption was to exist only until a date to be proclaimed.

BILL 9

1974

**An Act to amend
The Ontario Human Rights Code**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 of section 3 of *The Ontario Human Rights Code*,^{s. 3 (2), re-enacted} being chapter 318 of the Revised Statutes of Ontario, 1970, as re-enacted by the Statutes of Ontario, 1972, chapter 119, section 4, is repealed and the following substituted therefor:
 - (2) The prohibition in subsection 1 in respect of sex^{Exception} does not apply to housing accommodation in a building where the occupancy of all the housing accommodation other than that of the owner or his family is restricted to individuals who are of the same sex.
2. Subsection 6 of section 4 of the said Act, as re-enacted by^{s. 4 (6), re-enacted} the Statutes of Ontario, 1972, chapter 119, section 5, is repealed and the following substituted therefor:
 - (6) The provisions of this section relating to any discrimination, limitation, specification or preference for a position or employment based on age, sex or marital status do not apply where age, sex or marital status is a *bona fide* occupational qualification and requirement for the position or employment.
3. Section 4 of the said Act, as re-enacted by the Statutes of^{s. 4, amended} Ontario, 1972, chapter 119, section 5, is amended by adding thereto the following subsection:
 - (9) Clause g of subsection 1 does not apply to any *bona fide* superannuation or pension fund or plan or any *bona fide* insurance plan that provides life, income, disability, sickness, medical or hospital payments or benefits of a monetary kind to which an employee, his survivors or dependants are or may be entitled that differentiates or makes a distinction, exclusion or preference between employees or any class or classes of employees because of age, sex or marital status.

s. 7a,
repealed

- 4.** Section 7a of the said Act, as enacted by the Statutes of Ontario, 1972, chapter 119, section 8, is repealed.

s. 14,
re-enacted

- 5.** Section 14 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 50, section 63, and amended by 1972, chapter 119, section 11, is repealed and the following substituted therefor:

Inquiry and
settlement

14.—(1) Where a complaint has been filed with or initiated by the Commission, the Commission or an officer thereof shall inquire into the complaint and endeavour to effect a settlement of the matter complained of.

Powers of
Commission
and officers
of the
Commission

(2) In carrying out an inquiry under subsection 1, the Commission or an officer of the Commission may,

- (a) subject to subsection 3, enter in or upon the lands or premises of a person at any reasonable time without a warrant for the purpose of investigating the complaint;
- (b) require the production for inspection and examination of employment applications, payrolls, records, documents, writings and papers that are or may be relevant to the investigation of the complaint;
- (c) upon giving a receipt therefor, remove any employment applications, payrolls, records, documents, writings and papers mentioned in clause b for the purpose of making copies or extracts of such applications, payrolls, records, documents, writings and papers, but such copying shall be carried on with reasonable dispatch and the applications, payrolls, records, documents, writings and papers shall be promptly thereafter returned and to the premises from which they were removed;
- (d) make any inquiries of any person separate or apart from another person that are or may be relevant to the complaint.

Access to
dwelling

(3) An officer of the Commission shall not enter any room or place actually being used as a dwelling without the consent of the occupier except under the authority of an order issued pursuant to subsection 4.

Order of
justice of
the peace

(4) Where a justice of the peace is satisfied, upon an *ex parte* application by an officer of the Commission, that there is reasonable ground for believing that it is necessary

SECTION 4. The administrative and enforcement functions formerly carried out by the Ontario Women's Bureau are now carried out by the Commission under this Act.

SECTION 5. The purpose of the amendment is to make provision for the investigation of complaints under the Act rather than provide for formal inquiries at this point in the proceedings.

to enter any premises for purposes relevant to an inquiry under this Act, the justice of the peace may issue an order authorizing an officer of the Commission to enter and view such premises for such purposes, but every such entry and viewing shall be made between sunrise and sunset unless the justice of the peace by the order authorizes the officer to make such entry and viewing at night.

(5) No person shall hinder, obstruct, molest or interfere with the Commission or an officer of the Commission in the exercise of a power or the performance of a duty under this Act or withhold from it or him any employment applications, payrolls, records, documents, writings or papers that are or may be relevant to the investigation of a complaint.

- 6. Subsection 2 of section 16 of *The Ontario Human Rights Code* 1972, c. 119, s. 16(2), repealed, being chapter 119, is repealed.
- 7. This Act comes into force on the day it receives Royal Assent. Commencement
- 8. This Act may be cited as *The Ontario Human Rights Code* Short title, *Amendment Act, 1974*.

An Act to amend
The Ontario Human Rights Code

1st Reading

March 7th, 1974

2nd Reading

November 15th, 1974

3rd Reading

November 28

THE HON. J. MACBETH
Minister of Labour

(Reprinted as amended by the
Committee of the Whole House)

CA2ON
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-B 56

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

An Act to amend The Ontario Human Rights Code

THE HON. J. MACBETH
Minister of Labour



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

BILL 9**1974**

**An Act to amend
The Ontario Human Rights Code**

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1. Subsection 2 of section 3 of *The Ontario Human Rights Code*, ^{s. 3 (2),} being chapter 318 of the Revised Statutes of Ontario, 1970, as re-enacted by the Statutes of Ontario, 1972, chapter 119, section 4, is repealed and the following substituted therefor:
 - (2) The prohibition in subsection 1 in respect of sex ^{Exception} does not apply to housing accommodation in a building where the occupancy of all the housing accommodation other than that of the owner or his family is restricted to individuals who are of the same sex.
2. Subsection 6 of section 4 of the said Act, as re-enacted by ^{s. 4 (6),} the Statutes of Ontario, 1972, chapter 119, section 5, is repealed and the following substituted therefor:
 - (6) The provisions of this section relating to any discrimination, limitation, specification or preference for a position or employment based on age, sex or marital status do not apply where age, sex or marital status is a *bona fide* occupational qualification and requirement for the position or employment.
3. Section 4 of the said Act, as re-enacted by the Statutes of ^{s. 4,} Ontario, 1972, chapter 119, section 5, is amended by adding thereto the following subsection:
 - (9) Clause g of subsection 1 does not apply to any *bona fide* superannuation or pension fund or plan or any *bona fide* insurance plan that provides life, income, disability, sickness, medical or hospital payments or benefits of a monetary kind to which an employee, his survivors or dependants are or may be entitled that differentiates or makes a distinction, exclusion or preference between employees or any class or classes of employees because of age, sex or marital status.

s. 7a,
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- 4.** Section 7a of the said Act, as enacted by the Statutes of Ontario, 1972, chapter 119, section 8, is repealed.

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- 5.** Section 14 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 50, section 63, and amended by 1972, chapter 119, section 11, is repealed and the following substituted therefor:

Inquiry and
settlement

14.—(1) Where a complaint has been filed with or initiated by the Commission, the Commission or an officer thereof shall inquire into the complaint and endeavour to effect a settlement of the matter complained of.

Powers of
Commission
and officers
of the
Commission

(2) In carrying out an inquiry under subsection 1, the Commission or an officer of the Commission may,

- (a) subject to subsection 3, enter in or upon the lands or premises of a person at any reasonable time without a warrant for the purpose of investigating the complaint;
- (b) require the production for inspection and examination of employment applications, payrolls, records, documents, writings and papers that are or may be relevant to the investigation of the complaint;
- (c) upon giving a receipt therefor, remove any employment applications, payrolls, records, documents, writings and papers mentioned in clause b for the purpose of making copies or extracts of such applications, payrolls, records, documents, writings and papers, but such copying shall be carried on with reasonable dispatch and the applications, payrolls, records, documents, writings and papers shall be promptly thereafter returned and to the premises from which they were removed;
- (d) make any inquiries of any person separate or apart from another person that are or may be relevant to the complaint.

Access to
dwelling

(3) An officer of the Commission shall not enter any room or place actually being used as a dwelling without the consent of the occupier except under the authority of an order issued pursuant to subsection 4.

Order of
justice of
the peace

(4) Where a justice of the peace is satisfied, upon an *ex parte* application by an officer of the Commission, that there is reasonable ground for believing that it is necessary

to enter any premises for purposes relevant to an inquiry under this Act, the justice of the peace may issue an order authorizing an officer of the Commission to enter and view such premises for such purposes, but every such entry and viewing shall be made between sunrise and sunset unless the justice of the peace by the order authorizes the officer to make such entry and viewing at night.

(5) No person shall hinder, obstruct, molest or interfere with the Commission or an officer of the Commission in the exercise of a power or the performance of a duty under this Act or withhold from it or him any employment applications, payrolls, records, documents, writings or papers that are or may be relevant to the investigation of a complaint.

6. Subsection 2 of section 16 of *The Ontario Human Rights Code* 1972, c. 119,
Amendment Act, 1972, being chapter 119, is repealed. s. 16 (2),
repealed
7. This Act comes into force on the day it receives Royal Assent. Commencement
8. This Act may be cited as *The Ontario Human Rights Code* Short title *Amendment Act, 1974.*

An Act to amend
The Ontario Human Rights Code

1st Reading

March 7th, 1974

2nd Reading

November 15th, 1974

3rd Reading

November 28th, 1974

THE HON. J. MACBETH
Minister of Labour

CAZON

XB

-B 56

BILL 10

Private Member's Bill

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

An Act to amend The Mental Health Act



MR. ROY

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The Bill would require that a person who had been detained under section 10 of the Act for medical examination be brought before a justice of the peace within twenty-four hours to justify the validity of the detention.

BILL 10**1974**

An Act to amend The Mental Health Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Mental Health Act*, being chapter 269 of the Revised Statutes of Ontario, 1970, is amended by adding thereto ^{s. 10a, enacted}

10a. Where a person has been detained for medical examination under section 10, he shall be taken before a justice of the peace to be dealt with in the same manner as if an information upon oath were brought before the justice of the peace under section 9,

- (a) where a justice of the peace is available, within a period of twenty-four hours after the person has been detained, the person shall be taken before a justice of the peace before the expiration of that period; or
- (b) where a justice of the peace is not available ^{Commencement} within a period of twenty-four hours after the person has been detained, the person shall be taken before a justice of the peace as soon as possible.

2. This Act comes into force on the day it receives Royal Assent.
3. This Act may be cited as *The Mental Health Amendment* ^{Short title} *Act, 1974.*

An Act to amend
The Mental Health Act

1st Reading

March 7th, 1974

2nd Reading

3rd Reading

MR. ROY

(*Private Member's Bill*)

Legislative Document

CAZON

BILL 11

Private Member's Bill

XB

-B 56

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

Government
Publication

An Act to provide for the Protection of House Buyers

MR. GIVENS



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The Bill establishes a Commissioner of Housing and provides for the licensing of builders.

BILL 11**1974**

**An Act to provide for the
Protection of House Buyers**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "builder" means a person who constructs houses;
- (b) "Commissioner" means the Commissioner of Housing;
- (c) "Director" means the Director of the Consumer Protection Division of the Ministry;
- (d) "Minister" means the Minister of Consumer and Commercial Relations;
- (e) "Ministry" means the Ministry of Consumer and Commercial Relations;
- (f) "new house" means a house that is being sold for the first time;
- (g) "regulations" means the regulations made under this Act;
- (h) "Tribunal" means The Commercial Registration Appeal Tribunal established under *The Department of Financial and Commercial Affairs Act*, R.S.O. 1970, c. 113;
- (i) "used house" means a house that is being sold for a second or subsequent time.

COMMISSIONER

- 2.**—(1) There shall be a Commissioner of Housing who shall be appointed by the Lieutenant Governor in Council.

Powers and duties of Commissioner (2) The Commissioner may exercise the powers and shall discharge the duties conferred and imposed upon him by this Act and the regulations under the supervision of the Director.

LICENSING

Licensing 3.—(1) No person shall engage in business as a builder unless he is licensed as a builder.

Change in partnership (2) Where a partnership is licensed under subsection 1, any change in the membership of the partnership shall be deemed to create a new partnership for the purpose of licensing.

Licensing exception 4.—(1) An applicant is entitled to a licence or renewal of a licence by the Commissioner except where,

(a) having regard to his financial position, the applicant cannot reasonably be expected to be financially responsible in the conduct of his business; or

(b) the past conduct of the applicant affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty; or

(c) the applicant is a corporation and,

(i) having regard to its financial position, it cannot reasonably be expected to be financially responsible in the conduct of its business, or

(ii) the past conduct of its officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty; or

(d) the applicant is carrying on activities that are, or will be, if the applicant is licensed, in contravention of this Act or the regulations.

Conditions of a licence (2) A licence is subject to such terms and conditions to give effect to the purposes of this Act as are consented to by the applicant, imposed by the Tribunal or prescribed by the regulations.

Refusal to grant a licence 5.—(1) Subject to section 9, the Commissioner may refuse to grant a licence to an applicant where in the Commissioner's opinion the applicant is disentitled to a licence under section 4.

(2) Subject to section 6, the Commissioner may refuse to renew or may suspend or revoke a licence for any reason that would disentitle the licensee to a licence under section 4 if he were an applicant or where the licensee is in breach of a term or condition of the licence.

6.—(1) Where the Commissioner proposes to grant or renew a licence or proposes to suspend or revoke a licence, he shall serve notice of his proposal, together with written reasons therefor, on the applicant or licensee.

(2) A notice under subsection 1 shall inform the applicant or licensee that he is entitled to a hearing by the Tribunal if he mails or delivers, within fifteen days after the notice under section 1 is served on him, notice in writing requiring a hearing to the Commissioner and the Tribunal, and he may so require such a hearing.

(3) Where an applicant or licensee does not require a hearing by the Tribunal in accordance with subsection 2, the Commissioner may carry out the proposal stated in his notice under subsection 1.

(4) Where an applicant or licensee requires a hearing by the Tribunal in accordance with subsection 2, the Tribunal shall appoint a time for and hold the hearing and, on the application of the Commissioner at the hearing, may by order direct the Commissioner to carry out his proposal or refrain from carrying out his proposal and to take such action as the Tribunal considers the Commissioner ought to take in accordance with this Act and the regulations, and for such purposes the Tribunal may substitute its opinion for that of the Commissioner.

(5) The Tribunal may attach such terms and conditions to its order or to the registration as it considers proper to give effect to the purposes of this Act.

(6) The Commissioner, the applicant or licensee who has required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section.

(7) Notwithstanding subsection 1, the Commissioner may cancel a licence upon the request in writing of the licensee in the prescribed form surrendering his licence.

(8) Where, within the time prescribed therefor or, if no time is prescribed, before expiry of his licence, a licensee has applied for renewal of his licence and paid the prescribed fee, his licence shall be deemed to continue.

(a) until the renewal is granted; or

(b) where he is served with notice that the Commissioner proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing has expired and, where a hearing is required, until the Tribunal has made its order.

Order of
Tribunal
effective,
stay
R.S.O. 1970,
c. 113

(9) Notwithstanding that a licensee appeals from an order of the Tribunal under section 9b of *The Ministry of Consumer and Commercial Relations Act*, the order takes effect immediately, but the Tribunal may grant a stay until disposition of the appeal.

Further
applications

7. A further application for a licence may be made upon new or other evidence or where it is clear that material circumstances have changed.

Investiga-
tion of
complaints

8.—(1) Where the Commissioner receives a complaint in respect of a builder and so requests in writing, the builder shall furnish the Commissioner with such information respecting the matter complained of as the Commissioner requires.

Idem

(2) The request under subsection 1 shall indicate the nature of the inquiry involved.

Idem

(3) For the purposes of subsection 1, the Commissioner or any person designated in writing by him may at any reasonable time enter upon the business premises of the licensee to make an inspection in relation to the complaint.

Inspection

9.—(1) The Commissioner or any person designated by him in writing may at any reasonable time enter upon the business premises of the licensee to make an inspection to ensure that the provisions of this Act and the regulations relating to a licence are being complied with.

Idem

(2) Where the Commissioner has reasonable and probable grounds to believe that any person is acting as a builder while not licensed, the Commissioner or any person designated by him in writing may at any reasonable time enter upon such person's business premises to make an inspection for the purpose of determining whether or not the person is in contravention of section 3.

Powers on
inspection

10.—(1) Upon an inspection under section 8 or 9, the person inspecting,

(a) is entitled to free access to all books of account, cash, documents, bank accounts, vouchers, corre-

spondence and records of the person being inspected that are relevant for the purposes of the inspection; and

- (b) may, upon giving a receipt therefor, remove any material referred to in clause *a* that relates to the purpose of the inspection for the purpose of making a copy thereof, provided that such copying is carried out with reasonable dispatch and the material in question is promptly thereafter returned to the person being inspected,

and no person shall obstruct the person inspecting or withhold or destroy, conceal or refuse to furnish any information or thing required by the person inspecting for the purposes of the inspection.

- (2) Any copy made as provided in subsection 1 and pur-
porting to be certified by an inspector is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original.

- 11.** The Minister may by order appoint a person to make an investigation into any matter to which this Act applies as may be specified in the Minister's order and the person appointed shall report the result of his investigation to the Minister and, for the purposes of the investigation, the person making it has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part 1971, c. 49 applies to such investigation as if it were an inquiry under that Act.

- 12.**—(1) Where, upon a statement made under oath, the Director believes on reasonable and probable grounds that any person has,

- (a) contravened any of the provisions of this Act or the regulations; or
- (b) committed an offence under the *Criminal Code* R.S.C. 1970, c. C-34 (Canada) or under the law of any jurisdiction that is relevant to his fitness for licensing under this Act,

the Director may by order appoint one or more persons to make an investigation to ascertain whether such a contravention of the Act or regulation or the commission of such an offence has occurred, and the person appointed shall report the result of his investigation to the Director.

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the affairs of the person in respect of whom the investigation is being made and may,

- (a) upon production of his appointment, enter at any reasonable time the business premises of such person and examine books, papers, documents and things relevant to the subject-matter of the investigation; and
- (b) inquire into negotiations, transactions, loans, borrowings made by or on behalf of or in relation to such person and into property, assets or things owned, acquired or alienated in whole or in part by him or any person acting on his behalf that are relevant to the subject-matter of the investigation,

1971, c. 49

and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to such inquiry as if it were an inquiry under that Act.

Obstruction
of
investigator

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, papers, documents or things relevant to the subject-matter of the investigation.

Search
warrant

(4) Where a provincial judge is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, papers, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the provincial judge may, whether or not an inspection has been made or attempted under clause *a* of subsection 2, issue an order authorizing the person making the investigation, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, papers, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the provincial judge, by the order, authorizes the person making the investigation to make the search at night.

(5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, papers, documents or things examined under clause *a* of subsection 2 or subsection 4 relating to the person whose affairs are being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, papers or documents, but such copying shall be carried out with reasonable dispatch and the books, papers or documents in question shall be promptly thereafter returned to the person whose affairs are being investigated.

(6) Any copy made as provided in subsection 5 and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, paper or document and its contents.

(7) The Minister or Director may appoint any expert to examine books, papers, documents or things examined under clause *a* of subsection 2 or under subsection 4.

13.—(1) Every person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under section 8, 9, 10, 11 or 12, shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations; or
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry, inspection or investigation except in a proceeding under this Act or the regulations.

14. Where, upon the report of an investigation made under subsection 1 of section 13, it appears to the Director that a person may have,

- (a) contravened any of the provisions of this Act or the regulations; or

- (b) committed an offence, under the *Criminal Code* (Canada) or under the law of any jurisdiction, that is relevant to his fitness for licensing under this Act,

the Director shall send a full and complete report of the investigation, including the report made to him, any transcript of evidence and any material in the possession of the Director relating thereto, to the Minister.

15.—(1) Where,

- (a) an investigation of any person has been ordered under section 13; or
- (b) criminal proceedings or proceedings in relation to a contravention of any Act or regulation are about to be or have been instituted against a person that are connected with or arise out of the business in respect of which such person is registered,

the Director, if he believes it advisable for the protection of clients or customers of the person referred to in clause *a* or *b*, may, in writing or by telegram, direct any person having on deposit or under control or for safekeeping any assets or trust funds of the person referred to in clause *a* or *b* to hold such assets or trust funds or direct the person referred to in clause *a* or *b* to refrain from withdrawing any such assets or trust funds from any person having any of them on deposit or under control or for safekeeping or to hold such assets or any trust funds of clients, customers or others in his possession or control in trust for any interim receiver, custodian, trustee, receiver or liquidator appointed under the *Bankruptcy Act* (Canada), *The Judicature Act*, *The Corporations Act*, *The Business Corporations Act* or the *Winding-up Act* (Canada), or until the Director revokes or the Tribunal cancels such direction or consents to the release of any particular assets or trusts funds from the direction but, in the case of a bank, loan or trust company, the direction only applies to the office, branches or agencies thereof named in the direction.

(2) Subsection 1 does not apply where the person referred to in clause *a* or *b* of subsection 1 files with the Director,

- (a) a personal bond accompanied by collateral security;
- (b) a bond of a guarantee company approved under *The Guarantee Companies Securities Act*; or
- (c) a bond of a guarantor, other than a guarantee company, accompanied by collateral security,

in such form, terms and amount as the Director determines.

(3) Any person in receipt of a direction given under sub-section 1, if in doubt as to the application of the direction to any assets or trust funds, or in case of a claim being made thereto by a person not named in the direction, may apply to a judge or local judge of the Supreme Court who may direct the disposition of such assets or trust funds and may make such order as to costs as seems just.

(4) In any of the circumstances mentioned in clause *a* or *b* of subsection 1, the Director may in writing or by telegram notify any registrar or master of titles that proceedings are being or are about to be taken that may affect land belonging to the person referred to in the notice, and the notice shall be registered against the lands mentioned therein and has the same effect as the registration of a certificate of *lis pendens* except that the Director may in writing revoke or modify the notice.

(5) Any person referred to in clause *a* or *b* of subsection 1 in respect of whom a direction has been given by the Director under subsection 1 or any person having an interest in land in respect of which a notice has been registered under subsection 4 may, at any time, apply to the Tribunal for cancellation in whole or in part of the direction or registration and the Tribunal shall dispose of the application after a hearing and may, if it finds that such a direction or registration is not required in whole or in part for the protection of clients or customers of the applicant or of other persons interested in the land or that the interests of other persons are unduly prejudiced thereby, cancel the direction or registration in whole or in part, and the applicant, the Director and such other persons as the Tribunal may specify are parties to the proceedings before the Tribunal.

REGULATION OF BUILDING

16. Every builder shall keep a record sheet in the prescribed form and proper books and accounts with respect to his business as a builder.

17.—(1) Every builder shall maintain an account designated as a trust account in a chartered bank, loan or trust company or Province of Ontario Savings Office in which shall be deposited all moneys that come into his hands in trust for other persons in connection with his business, and he shall at all times keep such moneys separate and apart from moneys belonging to himself or to the partnership, in the case of a partnership, and shall disburse such moneys only in accordance with the terms of the trust.

Unclaimed trust moneys	(2) Where a builder holds moneys in trust for a period of one year after the person for whom it is held first became entitled to payment of the moneys and such person cannot be located, the builder shall pay the moneys to the Treasurer of Ontario who shall pay the moneys to the person appearing to the Treasurer to be entitled thereto.
Notice	18. Every builder shall notify the Commissioner in writing sixty days before commencing construction of a house.
Fee	19. —(1) Every builder shall pay to the Commissioner a fee in such amount and at such time as prescribed by the regulations, for each house on which he has commenced construction.
Insurance fund established	(2) The fees referred to in subsection 1 shall be used to establish a house buyers insurance fund.
Building code	20. —(1) Every house, the construction of which is commenced on or after the 1st day of January, 1975, shall be built to the minimum standards prescribed in the regulations.
Idem	(2) Every house referred to in subsection 1 shall be inspected by an inspector designated in writing by the Commissioner, at least four times during the period of its construction to ensure compliance with this Act and the regulations.
Warranty	21. —(1) Except for those defects noted in the Agreement of Purchase and Sale, where a builder sells a house, he shall, <ul style="list-style-type: none"> (a) guarantee the house against any latent defects for a period of at least five years from the date of completion of construction; and (b) guarantee the house against any patent defects for a period of at least one year from the date of completion of construction.
Subsequent purchasers	(2) The warranties referred to in subsection 1 shall be valid and binding with regard to any subsequent purchasers of the house.
Agreement of Purchase and Sale prescribed	22. Every house sold in Ontario shall be sold only pursuant to the form of Agreement of Purchase and Sale prescribed in the regulations.

23.—(1) Every vendor of a new house shall in so far as such defects are known to him include in the Agreement of Purchase and Sale, a list of all patent defects of the house.

(2) Every vendor of a used house shall in so far as such defects are known to him include in the Agreement of Purchase and Sale, a list of all latent and patent defects of the house.

24.—(1) Any notice or order required to be given or served under this Act or the regulations is sufficiently given or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is required to be made at the latest address for service appearing on the records of the Ministry.

(2) Where service is made by registered mail, the service shall be deemed to be made on the third day after the day of mailing unless the person on whom service is being made establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice or order until a later date.

(3) Notwithstanding subsections 1 and 2, the Tribunal may order any other method of service in respect of any matter before the Tribunal.

25.—(1) Where it appears to the Director that any person does not comply with any provision of this Act, the regulations or an order made under this Act, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights he may have, the Director may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

(2) An appeal lies to the Supreme Court from an order made under subsection 1.

26.—(1) Every person who, knowingly,

Offences

(a) furnishes false information in any application under this Act or in any statement or return required to be furnished under this Act or the regulations;

(b) fails to comply with any order, direction or other requirement made under this Act; or

(c) contravenes any provision of this Act or the regulations,

and every director or officer of a corporation who knowingly concurs in such furnishing, failure or contravention is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

Corporations (2) Where a corporation is convicted of an offence under subsection 1, the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided therein.

Consent of Minister (3) No proceedings under this section shall be instituted except with the consent of the Minister.

Limitation (4) No proceeding under clause *a* of subsection 1 shall be commenced more than one year after the facts upon which the proceeding is based first came to the knowledge of the Director.

Idem (5) No proceeding under clause *b* or *c* of subsection 1 shall be commenced more than two years after the time when the subject-matter of the proceeding arose.

Regulations **27.** The Lieutenant Governor in Council may make regulations,

- (a) requiring and governing the books, accounts and records that shall be kept by licensed builders;
- (b) governing applications for a licence or renewal of a licence and prescribing terms and conditions of licences;
- (c) prescribing the fees payable upon applications for licences and renewal of licences and any other fees in connection with the administration of this Act and the regulations;
- (d) prescribing the fees payable by builders and the time at which they are to be paid, for each house on which a builder has commenced construction;
- (e) prescribing the practice and procedure upon investigations under sections 8 and 10;
- (f) prescribing forms and providing for their use;
- (g) prescribing further procedures respecting the conduct of matters coming before the Tribunal;

- (h) prescribing the minimum building standards for the construction of houses;
- (i) providing for the managing of the house buyers insurance fund and the method of compensating persons claiming from the fund.

28. This Act comes into force on the day it receives Commencement Royal Assent.

29. This Act may be cited as *The House Buyers Protection Act, 1974.* Short title

An Act to provide for the
Protection of House Buyers

1st Reading

March 11th, 1974

2nd Reading

3rd Reading

MR. GIVENS

(*Private Member's Bill*)

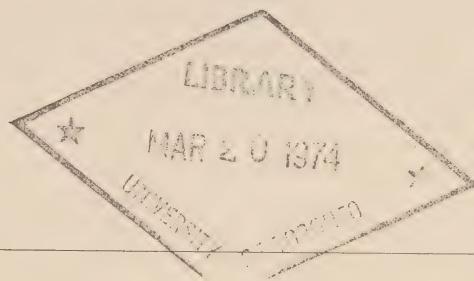
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BILL 12

Government Bill

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

An Act respecting a certain Dispute between the York County Board of Education and certain of its Teachers



THE HON. T. L. WELLS
Minister of Education

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

This Act makes provision for the settlement of all matters remaining in dispute between the York County Board of Education and its secondary school teachers and requires the teachers to resume their employment with the Board and the Board to resume the employment of the teachers. The rates of salaries last offered by the Board are implemented effective from the 1st day of September, 1973 until the award of the board of arbitration comes into operation.

BILL 12**1974**

**An Act respecting a certain Dispute
between the York County Board of
Education and certain of its Teachers**

WHÈREAS the York County Board of Education and Preamble its secondary school teachers have been negotiating terms of employment; and whereas these negotiations are deemed to have reached an impasse after approximately ten months of free collective bargaining and mediation; and whereas the secondary school students of York County have been severely disadvantaged for approximately six weeks due to their lack of access to a full educational program; and whereas the public interest, and in particular the interests of students, requires that all teachers return to the classroom, and that means be found for the settlement of all matters in dispute between the Board and its teachers;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "Board" means the York County Board of Education;
- (b) "Minister" means the Minister of Education;
- (c) "teachers" means the secondary school teachers employed on permanent or probationary contracts by the York County Board of Education on the 30th day of January, 1974.

2.—(1) The teachers who withdrew their services as a result of submitting resignations effective on the 31st day of January, 1974, shall, on the day following the day this Act comes into force, resume their employment with the Board in accordance with their contracts of employment in effect on the 30th day of January, 1974 as they may be varied by an award made under this Act, and the Board shall, on the day

Resumption
of employ-
ment

following the day this Act comes into force, resume the employment of such teachers in accordance with such contracts of employment.

Exception (2) Nothing in this Act precludes a teacher from not resuming his employment with the Board for reasons of health or by mutual consent in writing of the teacher and the Board.

Arbitration **3.**—(1) The Board and The Ontario Secondary School Teachers' Federation on behalf of the teachers shall, within fifteen days after the day this Act comes into force, submit to final and binding arbitration under this Act the matters considered by the Board or the teachers, as the case may be, to be matters remaining in dispute by each sending to the Minister a notice in writing setting forth the matters considered to be matters remaining in dispute, and the Minister shall forward such notices to the board of arbitration.

Pupil-teacher ratio (2) Pupil-teacher ratio is arbitrable and shall be deemed to be included as a matter in dispute in the notices referred to in subsection 1.

Duties and procedures (3) The board of arbitration constituted under this section, upon receipt of a notice referred to in subsection 1, shall examine into and decide all matters that are in dispute between the Board and the teachers as evidenced by the notices referred to in subsection 1 and any other matters that appear to the board of arbitration to be necessary to be decided in order to make an award and shall determine its own procedures but shall give full opportunity to the Board and the negotiators for the teachers to present evidence and to make submissions.

Appointment of arbitrators (4) The Board and The Ontario Secondary School Teachers' Federation shall, within seven days after the day this Act comes into force, each appoint to a board of arbitration a person who has indicated his willingness to act and shall notify each other and the Minister of the name and address of the person so appointed, and where the Board or The Ontario Secondary School Teachers' Federation fails to appoint a member of the board of arbitration within such period, the Minister shall appoint such member.

Appointment of chairman (5) The two persons appointed under subsection 4 shall, within seven days after they have been appointed, appoint a person to act as chairman of the board of arbitration and, where no chairman can be agreed upon within such time, the persons so appointed shall notify the Minister who shall thereupon appoint the chairman.

(6) No person shall be appointed a member of the board ^{Disqualification} of arbitration who has any direct pecuniary interest in the matters coming before it or who is acting or who has, within a period of six months immediately preceding the date of his appointment, acted as mediator, solicitor, counsel, negotiator or agent of either the Board or the teachers, but no person shall be deemed to have a direct pecuniary interest by reason only of his being a ratepayer within the area of jurisdiction of the Board.

(7) Where a member appointed under subsection 4 ceases ^{Vacancy} to act by reason of withdrawal, death or otherwise before the board of arbitration has completed its work, a replacement shall be appointed by whoever made the appointment of the member who has ceased to act, and the board of arbitration shall continue to function as if such member were a member of the board of arbitration from the beginning.

(8) Where the chairman of the board of arbitration is ^{Chairman unable to act} unable to enter on or to carry on his duties so as to enable a decision to be rendered within a reasonable time after his appointment, the Minister shall appoint a person to act as chairman in his place and the arbitration shall begin *de novo*.

(9) Sections 4 to 8 and 10 to 23 of *The Statutory Powers Procedure Act, 1971* apply to proceedings under this Act ^{Application of 1971, c. 47.} and the parties to the proceedings are the Board and the teachers as represented by their negotiators.

(10) *The Arbitrations Act* does not apply to the arbitration ^{Application of R.S.O. 1970, c. 25} under this Act.

(11) Where the members of the board of arbitration are ^{Where arbitrators unable to agree on procedures} unable to agree on matters of procedure or as to the admissibility of evidence, the decision of the chairman governs.

(12) Where, before or during the proceedings before the board of arbitration, the parties have agreed upon some ^{Agreement upon some or all matters} matters to be included in the award and they so notify the board in writing of the matters agreed upon, the decision of the board shall be confined to,

- (a) the matters not agreed upon by the parties; and
- (b) such other matters that appear to the board necessary to be decided in order to make an award,

and where, before an award is made, the parties have settled all matters in dispute and have entered into an agreement, upon the board being notified thereof in writing by the parties, the board of arbitration is dissolved.

Time for
making
award

(13) The board of arbitration shall make an award in writing within three months after receiving a notice referred to in subsection 1 or within such further period as may be provided from time to time in writing by the board of arbitration.

Majority
decision to
be decision
of board of
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(14) The decision of a majority of the members of the board of arbitration is the decision of the board and, if there is no majority, the decision of the chairman is the decision of the board of arbitration.

Costs of
arbitration

(15) The Board and the teachers covered by the award shall pay the expenditures incurred by them respectively in appointing or retaining any person in relation to the arbitration, and all other expenses excluding the honorarium and expenses of the chairman, which shall be paid by the Province of Ontario, shall be shared equally by the Board and the teachers covered by the award and shall be paid within thirty days after the date of the award and, where the moneys required to be paid by the teachers are not paid within thirty days after the date of the award, The Ontario Secondary School Teachers' Federation shall pay such moneys within a further fifteen days.

Continuation
of current
understand-
ing

(16) Subject to section 4 and to the award made under this Act, the provisions of the understanding in operation between the Board and its teachers on the 30th day of January, 1974 shall continue in force until the award made by the arbitrators under this Act comes into operation.

Award
final and
binding

(17) The award made under this Act shall also include all matters agreed upon by the Board and the teachers and is final and binding upon the Board and the teachers.

Salaries

4. The rates of salaries for teachers in Categories I to IV as set out in the Schedule to this Act are effective on and after the 1st day of September, 1973 until the award made by the board of arbitration under this Act comes into operation, and the decision of the board of arbitration shall not provide for rates of salaries in Categories I to IV less than the rates of salaries as set out in the Schedule for such Categories.

Order of
judge

5. Where, on the application of the Board or a teacher, a judge of the Supreme Court is satisfied that the Board or any teacher has failed to comply with section 2, he may make an order requiring, as the case may be,

(a) the Board to employ the teacher who has attempted to comply with section 2; or

- (b) the teacher who has failed to comply with section 2 to resume his employment with the Board,

in accordance with his contract of employment in effect on the 30th day of January, 1974.

6. This Act comes into force on the day it receives Royal ^{Commencement} Assent.

7. This Act may be cited as *The York County Board of Education Teachers Dispute Act, 1974*. ^{Short title}

SCHEDULE

RATE OF ANNUAL SALARY

Years of Teaching Experience	Category I Teachers	Category II Teachers	Category III Teachers	Category IV Teachers
0	\$ 7,400	\$ 7,800	\$ 8,700	\$ 9,200
1	8,200	8,600	9,500	10,000
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3	9,500	9,850	10,800	11,350
4	9,900	10,250	11,300	11,850
5	10,600	10,850	12,100	12,650
6	11,150	11,450	12,700	13,200
7	11,550	11,900	13,250	13,750
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An Act respecting a certain Dispute
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1st Reading

March 12th, 1974

2nd Reading

3rd Reading

THE HON. T. L. WELLS
Minister of Education

(*Government Bill*)

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-B 56

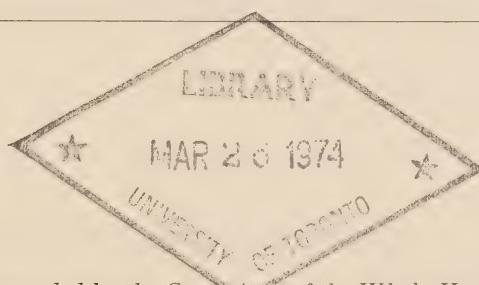
BILL 12

Government
Bill

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

**An Act respecting a certain Dispute between the York
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THE HON. T. L. WELLS
Minister of Education



(Reprinted as amended by the Committee of the Whole House)

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

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BILL 12**1974**

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unable to act</sup> unable to enter on or to carry on his duties so as to enable a decision to be rendered within a reasonable time after his appointment, the Minister shall appoint a person to act as chairman in his place and the arbitration shall begin *de novo*.

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1st Reading

March 12th, 1974

2nd Reading

March 13th, 1974

3rd Reading

THE HON. T. L. WELLS
Minister of Education

(Reprinted as amended by the
Committee of the Whole House)

CAZON

XB

-B56

BILL 12

Concurrent
Applications

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

**An Act respecting a certain Dispute between the York
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THE HON. T. L. WELLS
Minister of Education



TORONTO

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BILL 12**1974**

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following the day this Act comes into force, resume the employment of such teachers in accordance with such contracts of employment.

Exception (2) Nothing in this Act precludes a teacher from not resuming his employment with the Board for reasons of health or by mutual consent in writing of the teacher and the Board.

Arbitration **3.**—(1) The Board and The Ontario Secondary School Teachers' Federation on behalf of the teachers shall, within fifteen days after the day this Act comes into force, submit to final and binding arbitration under this Act the matters considered by the Board or the teachers, as the case may be, to be matters remaining in dispute by each sending to the Minister a notice in writing setting forth the matters considered to be matters remaining in dispute, and the Minister shall forward such notices to the board of arbitration.

Pupil-teacher ratio (2) Pupil-teacher ratio is arbitrable and shall be deemed to be included as a matter in dispute in the notices referred to in subsection 1.

Duties and procedures (3) The board of arbitration constituted under this section, upon receipt of a notice referred to in subsection 1, shall examine into and decide all matters that are in dispute between the Board and the teachers as evidenced by the notices referred to in subsection 1 and any other matters that appear to the board of arbitration to be necessary to be decided in order to make an award and shall determine its own procedures but shall give full opportunity to the Board and the negotiators for the teachers to present evidence and to make submissions.

Appointment of arbitrators (4) The Board and The Ontario Secondary School Teachers' Federation shall, within seven days after the day this Act comes into force, each appoint to a board of arbitration a person who has indicated his willingness to act and shall notify each other and the Minister of the name and address of the person so appointed, and where the Board or The Ontario Secondary School Teachers' Federation fails to appoint a member of the board of arbitration within such period, the Minister shall appoint such member.

Appointment of chairman (5) The two persons appointed under subsection 4 shall, within seven days after they have been appointed, appoint a third person to act as chairman of the board of arbitration and, where no chairman can be agreed upon within such time, the persons so appointed shall notify the Minister who shall thereupon appoint the chairman.

(6) No person shall be appointed a member of the board ^{Disqualification} of arbitration who has any direct pecuniary interest in the matters coming before it or who is acting or who has, within a period of six months immediately preceding the date of his appointment, acted as mediator, solicitor, counsel, negotiator or agent of either the Board or the teachers, but no person shall be deemed to have a direct pecuniary interest by reason only of his being a ratepayer within the area of jurisdiction of the Board.

(7) Where a member appointed under subsection 4 ceases ^{Vacancy} to act by reason of withdrawal, death or otherwise before the board of arbitration has completed its work, a replacement shall be appointed by whoever made the appointment of the member who has ceased to act, and the board of arbitration shall continue to function as if such member were a member of the board of arbitration from the beginning.

(8) Where the chairman of the board of arbitration is ^{Chairman unable to act} unable to enter on or to carry on his duties so as to enable a decision to be rendered within a reasonable time after his appointment, the Minister shall appoint a person to act as chairman in his place and the arbitration shall begin *de novo*.

(9) Sections 4 to 8 and 10 to 23 of *The Statutory Powers Application of 1971, c. 47*, *Procedure Act, 1971* apply to proceedings under this Act ^{Application of parties} and the parties to the proceedings are the Board and the teachers as represented by their negotiators.

(10) *The Arbitrations Act* does not apply to the arbitration ^{Application of R.S.O. 1970, c. 25} under this Act.

(11) Where the members of the board of arbitration are ^{Where arbitrators unable to agree on procedures} unable to agree on matters of procedure or as to the admissibility of evidence, the decision of the chairman governs.

(12) Where, before or during the proceedings before the ^{Agreement upon some or all matters} board of arbitration, the parties have agreed upon some all matters to be included in the award and they so notify the board in writing of the matters agreed upon, the decision of the board shall be confined to,

(a) the matters not agreed upon by the parties; and

(b) such other matters that appear to the board necessary to be decided in order to make an award,

and where, before an award is made, the parties have settled all matters in dispute and have entered into an agreement, upon the board being notified thereof in writing by the parties, the board of arbitration is dissolved.

Time for
making
award

(13) The board of arbitration shall make an award in writing within three months after receiving a notice referred to in subsection 1 or, with the approval of the Minister, within such further period as may be provided from time to time in writing by the board of arbitration.

Majority
decision to
be decision
of board of
arbitration

(14) The decision of a majority of the members of the board of arbitration is the decision of the board and, if there is no majority, the decision of the chairman is the decision of the board of arbitration.

Costs of
arbitration

(15) The Board and the teachers covered by the award shall pay the expenditures incurred by them respectively in appointing or retaining any person in relation to the arbitration, and all other expenses, excluding the honorarium and expenses of the chairman, which shall be paid by the Province of Ontario, shall be shared equally by the Board and the teachers covered by the award and shall be paid within thirty days after the date of the award and, where the moneys required to be paid by the teachers are not paid within thirty days after the date of the award, The Ontario Secondary School Teachers' Federation shall pay such moneys.

Continuation
of current
understand-
ing

(16) Subject to section 4 and to the award made under this Act, the provisions of the understanding in operation between the Board and its teachers on the 30th day of January, 1974 shall continue in force until the award made by the arbitrators under this Act comes into operation.

Award
final and
binding

(17) The award made under this Act shall also include all matters agreed upon by the Board and the teachers and is final and binding upon the Board and the teachers.

Salaries

4. The rates of salaries for teachers in Categories I to IV as set out in the Schedule to this Act are effective on and after the 1st day of September, 1973 until the award made by the board of arbitration under this Act comes into operation, and the decision of the board of arbitration shall not provide for rates of salaries in Categories I to IV less than the rates of salaries as set out in the Schedule for such Categories.

Order of
judge

5. Where, on the application of the Board or a teacher, a judge of the Supreme Court is satisfied that the Board or any teacher has failed to comply with section 2, he may make an order requiring, as the case may be,

(a) the Board to employ the teacher who has attempted to comply with section 2; or

- (b) the teacher who has failed to comply with section 2 to resume his employment with the Board,

in accordance with his contract of employment in effect on the 30th day of January, 1974.

6. This Act comes into force on the day it receives Royal ^{Commencement} Assent.

7. This Act may be cited as *The York County Board of Education Teachers Dispute Act, 1974*. ^{Short title}

SCHEDULE

RATE OF ANNUAL SALARY

Years of Teaching Experience	Category I Teachers	Category II Teachers	Category III Teachers	Category IV Teachers
0	\$ 7,400	\$ 7,800	\$ 8,700	\$ 9,200
1	8,200	8,600	9,500	10,000
2	9,000	9,300	10,250	10,750
3	9,500	9,850	10,800	11,350
4	9,900	10,250	11,300	11,850
5	10,600	10,850	12,100	12,650
6	11,150	11,450	12,700	13,200
7	11,550	11,900	13,250	13,750
8	12,050	12,350	13,750	14,250
9	12,500	12,800	14,250	14,750
10	13,000	13,300	14,750	15,250
11	13,550	13,750	15,350	15,850
12		14,300	16,150	16,450
13				17,400

An Act respecting a certain Dispute
between the York County Board of
Education and certain of its Teachers

1st Reading

March 12th, 1974

2nd Reading

March 13th, 1974

3rd Reading

March 14th, 1974

THE HON. T. L. WELLS
Minister of Education

ON
XB
-B 56

BILL 13

Government
Publications

Government Bill

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

**The Regional Municipalities
Amendment Act, 1974**

THE HON. J. WHITE
Treasurer of Ontario and Minister of Economics
and Intergovernmental Affairs



TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The amendments are designed to clarify the authority of an area municipality to continue the procedure to obtain any required external approval to a by-law passed by a local municipality to which the area municipality is successor.

BILL 13**1974**

**The Regional Municipalities
Amendment Act, 1974**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 of section 123c of *The Regional Municipality of Ottawa-Carleton Act*, being chapter 407 of the Revised Statutes of Ontario, 1970, as enacted by the Statutes of Ontario, 1973, chapter 138, section 18, is repealed and the following substituted therefor:
 - (2) Where any local municipality has passed a by-law <sup>R.S.O. 1970,
c. 407,
s. 123c (2),
re-enacted</sup> ^{Idem} that, prior to its coming into force, requires the approval of any minister of the Crown, any provincial ministry, the Municipal Board or any provincial body or agency, and such approval has not been obtained prior to the 31st day of December, 1973, the council of the successor area municipality to such local municipality shall be entitled to initiate or continue the procedure required to obtain such approval to the by-law passed by the local municipality in so far as it pertains to such area municipality, and the provisions of subsection 1 apply *mutatis mutandis* to any such by-law.
2. Subsection 8a of section 158 of *The Regional Municipality of Waterloo Act*, 1972, being chapter 105, as enacted by the <sup>1972, c. 105,
s. 158 (8a),
re-enacted</sup> Statutes of Ontario, 1973, chapter 137, section 9, is repealed and the following substituted therefor:
 - (8a) Where any local municipality has passed a by-law ^{Idem} that, prior to its coming into force, requires the approval of any minister of the Crown, any provincial ministry, the Municipal Board or any provincial body or agency, and such approval has not been obtained prior to the 31st day of December, 1972, the council of the successor area municipality to such local municipality shall be entitled to initiate or continue the procedure required to obtain such approval to the by-law passed by the local municipality in so far as it pertains to such area municipality, and the provisions of subsection 8 apply *mutatis mutandis* to any such by-law.

1973, c. 60,
s. 115, (8),
re-enacted

- 3.** Subsection 8 of section 115 of *The Regional Municipality of Peel Act, 1973*, being chapter 60, is repealed and the following substituted therefor:

Idem

(8) Where any local municipality has passed a by-law that, prior to its coming into force, requires the approval of any minister of the Crown, any provincial ministry, the Municipal Board or any provincial body or agency, and such approval has not been obtained prior to the 31st day of December, 1973, the council of the successor area municipality to such local municipality shall be entitled to initiate or continue the procedure required to obtain such approval to the by-law passed by the local municipality in so far as it pertains to such area municipality, and the provisions of subsection 7 apply *mutatis mutandis* to any such by-law.

1973, c. 70,
s. 115 (8),
re-enacted

- 4.** Subsection 8 of section 115 of *The Regional Municipality of Halton Act, 1973*, being chapter 70, is repealed and the following substituted therefor:

Idem

(8) Where any local municipality has passed a by-law that, prior to its coming into force, requires the approval of any minister of the Crown, any provincial ministry, the Municipal Board or any provincial body or agency, and such approval has not been obtained prior to the 31st day of December, 1973, the council of the successor area municipality to such local municipality shall be entitled to initiate or continue the procedure required to obtain such approval to the by-law passed by the local municipality in so far as it pertains to such area municipality, and the provisions of subsection 7 apply *mutatis mutandis* to any such by-law.

1973, c. 74,
s. 115 (8),
re-enacted

- 5.** Subsection 8 of section 115 of *The Regional Municipality of Hamilton-Wentworth Act, 1973*, being chapter 74, is repealed and the following substituted therefor:

Idem

(8) Where any local municipality has passed a by-law that, prior to its coming into force, requires the approval of any minister of the Crown, any provincial ministry, the Municipal Board or any provincial body or agency, and such approval has not been obtained prior to the 31st day of December, 1973, the council of the successor area municipality to such local municipality shall be entitled to initiate or continue the procedure required to obtain such approval to the by-law passed by the local municipality in so far as it pertains to such area municipality, and the provisions of subsection 7 apply *mutatis mutandis* to any such by-law.

1973, c. 78,
s. 123(8),
re-enacted

- 6.** Subsection 8 of section 123 of *The Regional Municipality of Durham Act, 1973*, being chapter 78, as re-enacted by the

Statutes of Ontario, 1973, chapter 147, section 10, is repealed and the following substituted therefor:

(8) Where any local municipality has passed a by-law ^{By-laws} that, prior to its coming into force, requires the approval of any minister of the Crown, any provincial ministry, the Municipal Board or any provincial body or agency, and such approval has not been obtained prior to the 31st day of December, 1973, the council of the area municipality, the council of The Municipality of Metropolitan Toronto, or the council of the Borough of Scarborough, as the case may be, which is successor to such local municipality shall be entitled to initiate or continue the procedure required to obtain such approval to the by-law passed by the local municipality in so far as it pertains to such area municipality, or to The Municipality of Metropolitan Toronto or to the Borough of Scarborough and the provisions of subsection 7 apply *mutatis mutandis* to any such by-law.

7. Subsection 9 of section 119 of *The Regional Municipality of Haldimand-Norfolk Act, 1973*, being chapter 96, as enacted <sup>s. 119 (9),
re-enacted</sup> by the Statutes of Ontario, 1973, chapter 155, section 4, is repealed and the following substituted therefor:

(9) Where any local municipality has passed a by-law ^{Idem} that, prior to its coming into force, requires the approval of any minister of the Crown, any provincial ministry, the Municipal Board or any provincial body or agency, and such approval has not been obtained prior to the 31st day of March, 1974, the council of the successor area municipality to such local municipality shall be entitled to initiate or continue the procedure required to obtain such approval to the by-law passed by the local municipality in so far as it pertains to such area municipality, and the provisions of subsection 8 apply *mutatis mutandis* to any such by-law.

8.—(1) This Act, except sections 1 to 7, comes into force on the ^{Commencement} day it receives Royal Assent.

(2) Section 2 shall be deemed to have come into force on the ^{Idem} 1st day of January, 1973.

(3) Sections 1, 3, 4, 5 and 6 shall be deemed to have come ^{Idem} into force on the 1st day of January, 1974.

(4) Section 7 comes into force on the 1st day of April, 1974. ^{Idem}

9. This Act may be cited as *The Regional Municipalities Amendment Act, 1974*. ^{Short title}

The Regional Municipalities
Amendment Act, 1974

1st Reading

March 14th, 1974

2nd Reading

3rd Reading

THE HON. J. WHITE
Treasurer of Ontario and Minister of
Economics and Intergovernmental
Affairs

(*Government Bill*)

XB
-B 56

BILL 13

Government
Publications

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

**The Regional Municipalities
Amendment Act, 1974**

THE HON. J. WHITE
Treasurer of Ontario and Minister of Economics
and Intergovernmental Affairs



TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

BILL 13**1974**

**The Regional Municipalities
Amendment Act, 1974**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 of section 123c of *The Regional Municipality of Ottawa-Carleton Act*, being chapter 407 of the Revised Statutes of Ontario, 1970, as enacted by the Statutes of Ontario, 1973, chapter 138, section 18, is repealed and the following substituted therefor:
 - (2) Where any local municipality has passed a by-law <sup>R.S.O. 1970,
c. 407,
s. 123c(2),
re-enacted</sup> *Idem* that, prior to its coming into force, requires the approval of any minister of the Crown, any provincial ministry, the Municipal Board or any provincial body or agency, and such approval has not been obtained prior to the 31st day of December, 1973, the council of the successor area municipality to such local municipality shall be entitled to initiate or continue the procedure required to obtain such approval to the by-law passed by the local municipality in so far as it pertains to such area municipality, and the provisions of subsection 1 apply *mutatis mutandis* to any such by-law.
2. Subsection 8a of section 158 of *The Regional Municipality of Waterloo Act, 1972*, being chapter 105, as enacted by the <sup>1972, c. 105,
s. 158(8a),
re-enacted</sup> Statutes of Ontario, 1973, chapter 137, section 9, is repealed and the following substituted therefor:
 - (8a) Where any local municipality has passed a by-law <sup>R.S.O. 1970,
c. 407,
s. 123c(2),
re-enacted</sup> *Idem* that, prior to its coming into force, requires the approval of any minister of the Crown, any provincial ministry, the Municipal Board or any provincial body or agency, and such approval has not been obtained prior to the 31st day of December, 1972, the council of the successor area municipality to such local municipality shall be entitled to initiate or continue the procedure required to obtain such approval to the by-law passed by the local municipality in so far as it pertains to such area municipality, and the provisions of subsection 8 apply *mutatis mutandis* to any such by-law.

- 1973, c. 60,
s. 115, (8),
re-enacted
- 3.** Subsection 8 of section 115 of *The Regional Municipality of Peel Act, 1973*, being chapter 60, is repealed and the following substituted therefor:

Idem

(8) Where any local municipality has passed a by-law that, prior to its coming into force, requires the approval of any minister of the Crown, any provincial ministry, the Municipal Board or any provincial body or agency, and such approval has not been obtained prior to the 31st day of December, 1973, the council of the successor area municipality to such local municipality shall be entitled to initiate or continue the procedure required to obtain such approval to the by-law passed by the local municipality in so far as it pertains to such area municipality, and the provisions of subsection 7 apply *mutatis mutandis* to any such by-law.

1973, c. 70,
s. 115 (8),
re-enacted

- 4.** Subsection 8 of section 115 of *The Regional Municipality of Halton Act, 1973*, being chapter 70, is repealed and the following substituted therefor:

Idem

(8) Where any local municipality has passed a by-law that, prior to its coming into force, requires the approval of any minister of the Crown, any provincial ministry, the Municipal Board or any provincial body or agency, and such approval has not been obtained prior to the 31st day of December, 1973, the council of the successor area municipality to such local municipality shall be entitled to initiate or continue the procedure required to obtain such approval to the by-law passed by the local municipality in so far as it pertains to such area municipality, and the provisions of subsection 7 apply *mutatis mutandis* to any such by-law.

1973, c. 74,
s. 115(8),
re-enacted

- 5.** Subsection 8 of section 115 of *The Regional Municipality of Hamilton-Wentworth Act, 1973*, being chapter 74, is repealed and the following substituted therefor:

Idem

(8) Where any local municipality has passed a by-law that, prior to its coming into force, requires the approval of any minister of the Crown, any provincial ministry, the Municipal Board or any provincial body or agency, and such approval has not been obtained prior to the 31st day of December, 1973, the council of the successor area municipality to such local municipality shall be entitled to initiate or continue the procedure required to obtain such approval to the by-law passed by the local municipality in so far as it pertains to such area municipality, and the provisions of subsection 7 apply *mutatis mutandis* to any such by-law.

1973, c. 78,
s. 123 (8),
re-enacted

- 6.** Subsection 8 of section 123 of *The Regional Municipality of Durham Act, 1973*, being chapter 78, as re-enacted by the

Statutes of Ontario, 1973, chapter 147, section 10, is repealed and the following substituted therefor:

- (8) Where any local municipality has passed a by-law ^{By-laws} that, prior to its coming into force, requires the approval of any minister of the Crown, any provincial ministry, the Municipal Board or any provincial body or agency, and such approval has not been obtained prior to the 31st day of December, 1973, the council of the area municipality, the council of The Municipality of Metropolitan Toronto, or the council of the Borough of Scarborough, as the case may be, which is successor to such local municipality shall be entitled to initiate or continue the procedure required to obtain such approval to the by-law passed by the local municipality in so far as it pertains to such area municipality, or to The Municipality of Metropolitan Toronto or to the Borough of Scarborough and the provisions of subsection 7 apply *mutatis mutandis* to any such by-law.
7. Subsection 9 of section 119 of *The Regional Municipality of Haldimand-Norfolk Act, 1973*, being chapter 96, as enacted <sup>s. 119(9),
re-enacted</sup> by the Statutes of Ontario, 1973, chapter 155, section 4, is repealed and the following substituted therefor:
- (9) Where any local municipality has passed a by-law ^{Idem} that, prior to its coming into force, requires the approval of any minister of the Crown, any provincial ministry, the Municipal Board or any provincial body or agency, and such approval has not been obtained prior to the 31st day of March, 1974, the council of the successor area municipality to such local municipality shall be entitled to initiate or continue the procedure required to obtain such approval to the by-law passed by the local municipality in so far as it pertains to such area municipality, and the provisions of subsection 8 apply *mutatis mutandis* to any such by-law.
- 8.—(1) This Act, except sections 1 to 7, comes into force on the ^{Commencement} day it receives Royal Assent.
- (2) Section 2 shall be deemed to have come into force on the ^{Idem} 1st day of January, 1973.
- (3) Sections 1, 3, 4, 5 and 6 shall be deemed to have come ^{Idem} into force on the 1st day of January, 1974.
- (4) Section 7 comes into force on the 1st day of April, 1974. ^{Idem}
9. This Act may be cited as *The Regional Municipalities Amendment Act, 1974*. ^{Short title}

BILL 13

The Regional Municipalities
Amendment Act, 1974

1st Reading

March 14th, 1974

2nd Reading

April 2nd, 1974

3rd Reading

April 4th, 1974

THE HON. J. WHITE
Treasurer of Ontario and Minister of
Economics and Intergovernmental
Affairs

XB
-B 56

BILL 14

Government Bill

Government
Publications

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

An Act to amend
The Territorial Division Act

THE HON. J. WHITE
Treasurer of Ontario and Minister of Economics
and Intergovernmental Affairs



TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The Bill in the main reflects the changes in municipal structure brought about by the establishment of regional government in various areas of the Province. Certain amalgamations, annexations and dissolutions are taken into account and a number of geographic townships are transferred from the Territorial District of Timiskaming to that of Cochrane, the effect of which is to straighten the boundary between the two districts. Additionally, the line in Lake Ontario defining the limits of townships lying on the Lake west of the east boundary of Metropolitan Toronto is redefined to clarify its precise location.

BILL 14**1974**

**An Act to amend
The Territorial Division Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Paragraph 5 of section 1 of *The Territorial Division Act*,<sup>s.1,
par. 5,</sup> being chapter 458 of the Revised Statutes of Ontario, 1970,^{re-enacted} is repealed and the following substituted therefor:

5.—THE REGIONAL MUNICIPALITY OF DURHAM Durham

consists of the municipalities from time to time included within the Regional Area as defined in *The Regional Municipality of Durham Act, 1973*.^{1973, c. 78}

(2) Paragraph 12 of the said section 1 is repealed and the<sup>s.1,
par. 12,
re-enacted</sup> following substituted therefor:

12.—THE REGIONAL MUNICIPALITY OF HALDIMAND-NORFOLK Haldimand-Norfolk

consists of the municipalities from time to time included within the Regional Area as defined in *The Regional Municipality of Haldimand-Norfolk Act, 1973*.^{1973, c. 96}

(3) Paragraph 13 of the said section 1 is repealed and the<sup>s.1,
par. 13,
re-enacted</sup> following substituted therefor:

13.—THE REGIONAL MUNICIPALITY OF HALTON Halton

consists of the municipalities from time to time included within the Regional Area as defined in *The Regional Municipality of Halton Act, 1973*.^{1973, c. 70}

(4) The said section 1 is amended by adding thereto the<sup>s.1,
amended</sup> following paragraph:

Hamilton-Wentworth

1973, c. 74

s. 1,
par. 18 (d),
re-enacted

13A.—THE REGIONAL MUNICIPALITY OF HAMILTON-WENTWORTH

consists of the municipalities from time to time included in the Regional Area as defined in *The Regional Municipality of Hamilton-Wentworth Act, 1973*.

- (5) Clause *d* of paragraph 18 of the said section 1 is repealed and the following substituted therefor:

(d) the townships of,	
Bathurst,	Montague,
Beckwith,	North Burgess,
Darling,	North Elmsley,
Drummond,	Pakenham,
Lanark,	Ramsay,
Lavant, Dalhousie and North Sherbrooke,	South Sherbrooke.

s. 1,
par. 23,
repealed

- (6) Paragraph 23 of the said section 1 is repealed.

s. 1,
par. 24 (a),
amended

- (7) Clause *a* of paragraph 24 of the said section 1 is amended by adding at the end thereof "Port Hope".

s. 1,
par. 24 (c),
amended

- (8) Clause *c* of paragraph 24 of the said section 1 is amended by inserting after "Hamilton" in the first column "Hope" and by striking out "South Monaghan" in the second column.

s. 1,
par. 25,
repealed

- (9) Paragraph 25 of the said section 1 is repealed.

s. 1,
par. 28,
re-enacted

- (10) Paragraph 28 of the said section 1 is repealed and the following substituted therefor:

Peel

28.—THE REGIONAL MUNICIPALITY OF PEEL

1973, c. 60

s. 1,
par. 30 (b),
amended

consists of the municipalities from time to time included within the Regional Area as defined in *The Regional Municipality of Peel Act, 1973*.

s. 1,
par. 30 (c),
amended

- (11) Clause *b* of paragraph 30 of the said section 1 is amended by inserting after "Lakefield" in the first line "Millbrook".

- (12) Clause *c* of paragraph 30 of the said section 1 is amended by inserting after "Burleigh and Anstruther" in the first column "Cavan" and by inserting after "Smith" in the second column "South Monaghan".

s. 1,
par. 35 (b),
amended

- (13) Clause *b* of paragraph 35 of the said section 1 is amended by adding at the end thereof "Wasaga Beach".

- (14) Clause *c* of paragraph 35 of the said section 1 is amended <sup>s. 1,
par. 35(c),
amended</sup> by striking out "Wasaga Beach" in the third line.
- (15) Clause *d* of paragraph 35 of the said section 1 is amended <sup>s. 1,
par. 35(d),
amended</sup> by inserting after "Innisfil" in the first column "Mara" and by inserting after "Oro" in the second column "Rama".
- (16) Clause *c* of paragraph 38 of the said section 1 is amended <sup>s. 1,
par. 38(c),
amended</sup> by inserting after "Laxton, Digby and Longford" in the second column "Manvers".
- (17) Paragraph 39 of the said section 1 is repealed and the <sup>s. 1,
par. 39,
re-enacted</sup> following substituted therefor:

39.—THE REGIONAL MUNICIPALITY OF WATERLOO Waterloo

consists of the municipalities from time to time included within the Regional Area as defined in *The Regional Municipality of Waterloo Act, 1972*. ^{1972, c. 105}

- (18) Paragraph 41 of the said section 1 is repealed. <sup>s. 1,
par. 41,
repealed</sup>
- (19) Paragraph 45 of the said section 1 is amended by re-lettering clause *a* as clause *aa* and by adding thereto the following clause:
 (a) the City of Timmins.
- (20) Clause *aa* of paragraph 45 of the said section 1, as <sup>s. 1,
par. 45(aa),
amended</sup> relettered by subsection 19, is amended by striking out "Timmins" in the second line.
- (21) Clause *b* of paragraph 45 of the said section 1 is amended <sup>s. 1,
par. 45(b),
amended</sup> by inserting after,
 (a) "Adair" in the first column "Adams";
 (b) "Belford" in the first column "Ben Nevis";
 (c) "Beniah" in the first column "Benoit";
 (d) "Birdsall" in the first column "Bisley, Black, Blackstock";
 (e) "Eilber" in the first column "Eldorado";
 (f) "Pliny" in the first column "Pontiac";
 (g) "Poulett" in the first column "Price";

- (h) "Jessop" in the second column "Keefer";
- (i) "Clergue" in the third column "Clifford";
- (j) "Dempsay" in the third column "Denton";
- (k) "Langemarck" in the third column "Langmuir";
- (l) "McCuaig" in the third column "McEvay";
- (m) "McQuibban" in the third column "Melba";
- (n) "Thorning" in the third column "Thornloe, Timmins"; and
- (o) "Tolmie" in the third column "Tolstoi".

s. 1,
par. 45,
amended

- (22) The description immediately following clause *b* of paragraph 45 of the said section 1 is amended by striking out "Dokis" in the sixteenth line and inserting in lieu thereof "Pontiac", by striking out "Whitesides" in the seventeenth line and inserting in lieu thereof "Keefer" and by striking out "Township of Whitesides to the northwest corner thereof" in the eighteenth and nineteenth lines and inserting in lieu thereof "townships of Keefer and Whitesides to the northwest corner of the Township of Whitesides".

s. 1,
par. 49(c),
amended

- (23) Clause *c* of paragraph 49 of the said section 1 is amended by inserting after "Field" in the third column "Finlayson (part)".

s. 1,
par. 49,
amended

- (24) The description immediately following clause *c* of paragraph 49 of the said section 1 is amended by striking out "southwesterly corner of the last-mentioned township; thence northerly along the westerly boundary of the Township of Finlayson to the northwesterly corner thereof; thence easterly along the northerly boundary of the Township of Finlayson" in the sixty-first, sixty-second, sixty-third, sixty-fourth and sixty-fifth lines and inserting in lieu thereof "easterly limit of the Township of Lake of Bays; thence northerly along the easterly boundary of the Township of Lake of Bays to the north-easterly corner thereof; thence westerly along the northerly boundary of the Township of Lake of Bays".

s. 1,
par. 52(a, b),
re-enacted

- (25) Clauses *a* and *b* of paragraph 52 of the said section 1 are repealed and the following substituted therefor:
 - (a) The Regional Municipality of Sudbury composed of the municipalities from time to time included

within the Regional Area as defined in *The Regional 1972, c. 104
Municipality of Sudbury Act, 1972*;

- (b) the towns of Espanola, Massey, Webbwood.
 - (26) Clause *a* of paragraph 54 of the said section 1 is amended <sup>s. 1,
par. 54(a),
amended</sup> by inserting after "Haileybury" in the first line "Kirk-
land Lake".
 - (27) Clause *c* of paragraph 54 of the said section 1 is amended <sup>s. 1,
par. 54(c),
amended</sup> by striking out "Adams", "Ben Nevis", "Benoit", amended
"Eldorado", "Keefer" and "Langmuir" in the first
column, by striking out "Bisley", "Black", "Blackstock",
"McEvay" and "Melba" in the second column and by
striking out "Clifford", "Denton", "Pontiac", "Price",
"Thorneloe", "Timmins" and "Tolstoi" in the third column.
 - (28) The description immediately following clause *c* of para- <sup>s. 1,
par. 54,
amended</sup> graph 54 of the said section 1 is amended by striking
out "Pharand, Hillary and Keefer" in the twenty-
second line and inserting in lieu thereof "Pharand
and Hillary" and by striking out "north" in the
twenty-fourth line and inserting in lieu thereof "south".
- 2.—(1)** Clause *a* of paragraph 1 of section 2 of the said Act <sup>s. 2,
par. 1(a),
re-enacted</sup> is repealed and the following substituted therefor:
- (a) the improvement districts of the North Shore and
White River.
 - (2) Clause *b* of paragraph 1 of the said section 2 is amended <sup>s. 2,
par. 1(b),
amended</sup> by striking out "Macdonald and Meredith" in the amended
second column and inserting in lieu thereof "Macdonald,
Meredith and Aberdeen Additional".
 - (3) Clause *a* of paragraph 2 of the said section 2 is <sup>s. 2,
par. 2(a),
repealed</sup> repealed.
 - (4) Clause *b* of paragraph 2 of the said section 2 is <sup>s. 2,
par. 2(b),
re-enacted</sup> repealed and the following substituted therefor:

- (b) the townships of,

Black River-Matheson,	Kendrey,
Fauquier,	Owens, Williamson and
Glackmeyer,	Idington,
	Shackleton and Machin.

- (5) Clause *a* of paragraph 3 of the said section 2 is <sup>s. 2,
par. 3(a),
amended</sup> amended by striking out "Ear Falls" in the first and amended
second lines.

s. 2,
par. 3(b),
re-enacted

- (6) Clause *b* of paragraph 3 of the said section 2 is repealed and the following substituted therefor:

(b) the townships of,

Ear Falls,	Machin,
Ignace,	Red Lake.
Jaffray and Melick,	

s. 2,
par. 8(a),
repealed

- (7) Clause *a* of paragraph 8 of the said section 2 is repealed.

s. 2,
par. 8(b),
re-enacted

- (8) Clause *b* of paragraph 8 of the said section 2 is repealed and the following substituted therefor:

(b) the townships of,

Baldwin,	Cosby, Mason and	Nairn,
Casimir, Jennings	Martland,	Ratter and Dunnet,
and Appleby,	Hagar,	Salter, May and
Chapleau,	Hallam,	Harrow.

s. 2,
par. 10(a),
re-enacted

- (9) Clause *a* of paragraph 10 of the said section 2 is repealed and the following substituted therefor:

(a) the Improvement District of Gauthier.

s. 2,
par. 10(b),
amended

- (10) Clause *b* of paragraph 10 of the said section 2 is amended by striking out "Teck" in the third column.

s. 4(1),
par. 3,
repealed

- 3.** Paragraph 3 of subsection 1 of section 4 of the said Act is repealed.

s. 8(2).
re-enacted

- 4.** Subsection 2 of section 8 of the said Act is repealed and the following substituted therefor:

Exception

(2) Subsection 1 does not apply to that part of Ontario at the head of Lake Ontario lying west of the east boundary of The Municipality of Metropolitan Toronto, but in that part the limits of all townships on either side of the Lake extend to the following described line:

Commencing at a point where the east boundary of The Municipality of Metropolitan Toronto meets the International Boundary; thence westerly along the line of the International Boundary to the point of its angle southerly; thence westerly in a straight line to and along the centre line of the Burlington Canal to its point of entry into Hamilton Harbour.

- 5.**—(1) This Act, except subsections 1 to 20, and 23 to 26^{Commencement} of section 1, subsection 1 and subsections 3 to 10 of section 2 and section 3, comes into force on the day it receives Royal Assent.
- (2) Subsections 23 and 24 of section 1 shall be deemed to^{Idem} have come into force on the 1st day of January, 1971.
- (3) Subsection 26 of section 1 and subsection 10 of section 2 shall be deemed to have come into force on the 1st day^{Idem} of January, 1972.
- (4) Subsections 17, 19, 20 and 25 of section 1 and sub-sections 3 to 9 of section 2 shall be deemed to have come into force on the 1st day of January, 1973.
- (5) Subsection 1 of section 2 shall be deemed to have come^{Idem} into force on the 1st day of March, 1973.
- (6) Subsections 1, 3, 4, 5, 7 to 16 and 18 of section 1 and section 3 shall be deemed to have come into force on the 1st day of January, 1974.
- (7) Subsections 2 and 6 of section 1 come into force on^{Idem} the 1st day of April, 1974.
- 6.** This Act may be cited as *The Territorial Division Amendment Act, 1974.*^{Short title}

BILL 14

An Act to amend
The Territorial Division Act

1st Reading

March 14th, 1974

2nd Reading

3rd Reading

THE HON. J. WHITE
Treasurer of Ontario and Minister of
Economics and Intergovernmental
Affairs

(*Government Bill*)

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BILL 14

Government Bill

Government
Publications

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

An Act to amend
The Territorial Division Act



THE HON. J. WHITE
Treasurer of Ontario and Minister of Economics
and Intergovernmental Affairs

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTE

The Bill in the main reflects the changes in municipal structure brought about by the establishment of regional government in various areas of the Province. Certain amalgamations, annexations and dissolutions are taken into account and a number of geographic townships are transferred from the Territorial District of Timiskaming to that of Cochrane, the effect of which is to straighten the boundary between the two districts. Additionally, the line in Lake Ontario defining the limits of townships lying on the Lake west of the east boundary of Metropolitan Toronto is redefined to clarify its precise location.

BILL 14**1974**

**An Act to amend
The Territorial Division Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.**—(1) Paragraph 5 of section 1 of *The Territorial Division Act*,<sup>s.1,
par. 5,
re-enacted</sup> being chapter 458 of the Revised Statutes of Ontario, 1970,
is repealed and the following substituted therefor:

5.—THE REGIONAL MUNICIPALITY OF DURHAM Durham

consists of the municipalities from time to time included within the Regional Area as defined in *The Regional Municipality of Durham Act, 1973*.^{1973, c. 78}

- (2) Paragraph 12 of the said section 1 is repealed and the<sup>s.1,
par. 12,
re-enacted</sup> following substituted therefor:

12.—THE REGIONAL MUNICIPALITY OF HALDIMAND-NORFOLK Haldimand-Norfolk

consists of the municipalities from time to time included within the Regional Area as defined in *The Regional Municipality of Haldimand-Norfolk Act, 1973*.^{1973, c. 96}

- (3) Paragraph 13 of the said section 1 is repealed and the<sup>s.1,
par. 13,
re-enacted</sup> following substituted therefor:

13.—THE REGIONAL MUNICIPALITY OF HALTON Halton

consists of the municipalities from time to time included within the Regional Area as defined in *The Regional Municipality of Halton Act, 1973*.^{1973, c. 70}

- (4) The said section 1 is amended by adding thereto the<sup>s.1,
amended</sup> following paragraph:

Hamilton-
Wentworth

1973, c. 74

s. 1,
par. 18 (d),
re-enacted

13A.—THE REGIONAL MUNICIPALITY OF HAMILTON-WENTWORTH

consists of the municipalities from time to time included in the Regional Area as defined in *The Regional Municipality of Hamilton-Wentworth Act, 1973*.

- (5) Clause *d* of paragraph 18 of the said section 1 is repealed and the following substituted therefor:

(d) the townships of,	
Bathurst,	Montague,
Beckwith,	North Burgess,
Darling,	North Elmsley,
Drummond,	Pakenham,
Lanark,	Ramsay,
Lavant, Dalhousie and North Sherbrooke,	South Sherbrooke.

s. 1,
par. 23,
repealed

s. 1,
par. 24 (a),
amended

s. 1,
par. 24 (c),
amended

s. 1,
par. 25,
repealed

s. 1,
par. 28,
re-enacted

Peel

1973, c. 60

s. 1,
par. 30 (b),
amended

s. 1,
par. 30 (c),
amended

s. 1,
par. 35 (b),
amended

- (6) Paragraph 23 of the said section 1 is repealed.

- (7) Clause *a* of paragraph 24 of the said section 1 is amended by adding at the end thereof "Port Hope".

- (8) Clause *c* of paragraph 24 of the said section 1 is amended by inserting after "Hamilton" in the first column "Hope" and by striking out "South Monaghan" in the second column.

- (9) Paragraph 25 of the said section 1 is repealed.

- (10) Paragraph 28 of the said section 1 is repealed and the following substituted therefor:

28.—THE REGIONAL MUNICIPALITY OF PEEL

consists of the municipalities from time to time included within the Regional Area as defined in *The Regional Municipality of Peel Act, 1973*.

- (11) Clause *b* of paragraph 30 of the said section 1 is amended by inserting after "Lakefield" in the first line "Millbrook".

- (12) Clause *c* of paragraph 30 of the said section 1 is amended by inserting after "Burleigh and Anstruther" in the first column "Cavan" and by inserting after "Smith" in the second column "South Monaghan".

- (13) Clause *b* of paragraph 35 of the said section 1 is amended by adding at the end thereof "Wasaga Beach".

- (14) Clause *c* of paragraph 35 of the said section 1 is amended <sup>s. 1,
par. 35(c),
amended</sup> by striking out “Wasaga Beach” in the third line.
- (15) Clause *d* of paragraph 35 of the said section 1 is amended <sup>s. 1,
par. 35(d),
amended</sup> by inserting after “Innisfil” in the first column “Mara” and by inserting after “Oro” in the second column “Rama”.
- (16) Clause *c* of paragraph 38 of the said section 1 is amended <sup>s. 1,
par. 38(c),
amended</sup> by inserting after “Laxton, Digby and Longford” in the second column “Manvers”.
- (17) Paragraph 39 of the said section 1 is repealed and the <sup>s. 1,
par. 39,
re-enacted</sup> following substituted therefor:

39.—THE REGIONAL MUNICIPALITY OF WATERLOO Waterloo

consists of the municipalities from time to time included ^{1972, c. 105} within the Regional Area as defined in *The Regional Municipality of Waterloo Act, 1972*.

- (18) Paragraph 41 of the said section 1 is repealed. <sup>s. 1,
par. 41,
repealed</sup>
- (19) Paragraph 45 of the said section 1 is amended by re-lettering clause *a* as clause *aa* and by adding thereto the following clause:
 (a) the City of Timmins.
- (20) Clause *aa* of paragraph 45 of the said section 1, as <sup>s. 1,
par. 45(aa),
amended</sup> relettered by subsection 19, is amended by striking out “Timmins” in the second line.
- (21) Clause *b* of paragraph 45 of the said section 1 is amended <sup>s. 1,
par. 45(b),
amended</sup> by inserting after,
 (a) “Adair” in the first column “Adams”;
 (b) “Belford” in the first column “Ben Nevis”;
 (c) “Beniah” in the first column “Benoit”;
 (d) “Birdsall” in the first column “Bisley, Black, Blackstock”;
 (e) “Eilber” in the first column “Eldorado”;
 (f) “Pliny” in the first column “Pontiac”;
 (g) “Poulett” in the first column “Price”;

- (h) "Jessop" in the second column "Keefer";
- (i) "Clergue" in the third column "Clifford";
- (j) "Dempsay" in the third column "Denton";
- (k) "Langemarck" in the third column "Langmuir";
- (l) "McCuaig" in the third column "McEvay";
- (m) "McQuibban" in the third column "Melba";
- (n) "Thorning" in the third column "Thornloe, Timmins"; and
- (o) "Tolmie" in the third column "Tolstoi".

s. 1,
par. 45,
amended

- (22) The description immediately following clause *b* of paragraph 45 of the said section 1 is amended by striking out "Dokis" in the sixteenth line and inserting in lieu thereof "Pontiac", by striking out "Whitesides" in the seventeenth line and inserting in lieu thereof "Keefer" and by striking out "Township of Whitesides to the northwest corner thereof" in the eighteenth and nineteenth lines and inserting in lieu thereof "townships of Keefer and Whitesides to the northwest corner of the Township of Whitesides".

s. 1,
par. 49(c),
amended

- (23) Clause *c* of paragraph 49 of the said section 1 is amended by inserting after "Field" in the third column "Finlayson (part)".

s. 1,
par. 49,
amended

- (24) The description immediately following clause *c* of paragraph 49 of the said section 1 is amended by striking out "southwesterly corner of the last-mentioned township; thence northerly along the westerly boundary of the Township of Finlayson to the northwesterly corner thereof; thence easterly along the northerly boundary of the Township of Finlayson in the Territorial District of Nipissing" in the sixty-first, sixty-second, sixty-third, sixty-fourth and sixty-fifth lines and inserting in lieu thereof "easterly limit of the Township of Lake of Bays; thence northerly along the easterly boundary of the Township of Lake of Bays to the north-easterly corner thereof; thence westerly along the north-easterly boundary of the Township of Lake of Bays in the Territorial District of Muskoka".

s. 1,
par. 52(a, b),
re-enacted

- (25) Clauses *a* and *b* of paragraph 52 of the said section 1 are repealed and the following substituted therefor:
- (a) The Regional Municipality of Sudbury composed of the municipalities from time to time included

within the Regional Area as defined in *The Regional 1972, c. 104
Municipality of Sudbury Act, 1972*;

- (b) the towns of Espanola, Massey, Webbwood.
 - (26) Clause *a* of paragraph 54 of the said section 1 is amended <sup>s. 1,
par. 54(a),
amended</sup>, by inserting after "Haileybury" in the first line "Kirk-land Lake".
 - (27) Clause *c* of paragraph 54 of the said section 1 is amended <sup>s. 1,
par. 54(c),
amended</sup>, by striking out "Adams", "Ben Nevis", "Benoit", "Eldorado", "Keefer" and "Langmuir" in the first column, by striking out "Bisley", "Black", "Blackstock", "McEvay" and "Melba" in the second column and by striking out "Clifford", "Denton", "Pontiac", "Price", "Thorneloe", "Timmins" and "Tolstoi" in the third column.
 - (28) The description immediately following clause *c* of paragraph 54 of the said section 1 is amended by striking out "Pharand, Hillary and Keefer" in the twenty-second line and inserting in lieu thereof "Pharand and Hillary" and by striking out "north" in the twenty-fourth line and inserting in lieu thereof "south".
- 2.—(1)** Clause *a* of paragraph 1 of section 2 of the said Act <sup>s. 2,
par. 1(a),
re-enacted</sup> is repealed and the following substituted therefor:
- (a) the improvement districts of the North Shore and White River.
 - (2) Clause *b* of paragraph 1 of the said section 2 is amended <sup>s. 2,
par. 1(b),
amended</sup>, by striking out "Macdonald and Meredith" in the second column and inserting in lieu thereof "Macdonald, Meredith and Aberdeen Additional".
 - (3) Clause *a* of paragraph 2 of the said section 2 is <sup>s. 2,
par. 2(a),
repealed</sup> repealed.
 - (4) Clause *b* of paragraph 2 of the said section 2 is <sup>s. 2,
par. 2(b),
re-enacted</sup> repealed and the following substituted therefor:
 - (b) the townships of,

Black River-Matheson,	Kendrey,
Fauquier,	Owens, Williamson and
Glackmeyer,	Idington,
	Shackleton and Machin.

- (5) Clause *a* of paragraph 3 of the said section 2 is <sup>s. 2,
par. 3(a),
amended</sup> amended by striking out "Ear Falls" in the first and second lines.

s. 2,
par. 3 (b),
re-enacted

- (6) Clause *b* of paragraph 3 of the said section 2 is repealed and the following substituted therefor:

(b) the townships of,

Ear Falls,	Machin,
Ignace,	Red Lake.
Jaffray and Melick,	

s. 2,
par. 8 (a),
repealed

- (7) Clause *a* of paragraph 8 of the said section 2 is repealed.

s. 2,
par. 8 (b),
re-enacted

- (8) Clause *b* of paragraph 8 of the said section 2 is repealed and the following substituted therefor:

(b) the townships of,

Baldwin,	Cosby, Mason and	Nairn,
Casimir, Jennings	Martland,	Ratter and Dunnet,
and Appleby,	Hagar,	Salter, May and
Chapleau,	Hallam,	Harrow.

s. 2,
par. 10 (a),
re-enacted

- (9) Clause *a* of paragraph 10 of the said section 2 is repealed and the following substituted therefor:

(a) the Improvement District of Gauthier.

s. 2,
par. 10 (b),
amended

- (10) Clause *b* of paragraph 10 of the said section 2 is amended by striking out "Teck" in the third column.

s. 4 (1),
par. 3,
repealed

- 3.** Paragraph 3 of subsection 1 of section 4 of the said Act is repealed.

s. 8 (2),
re-enacted

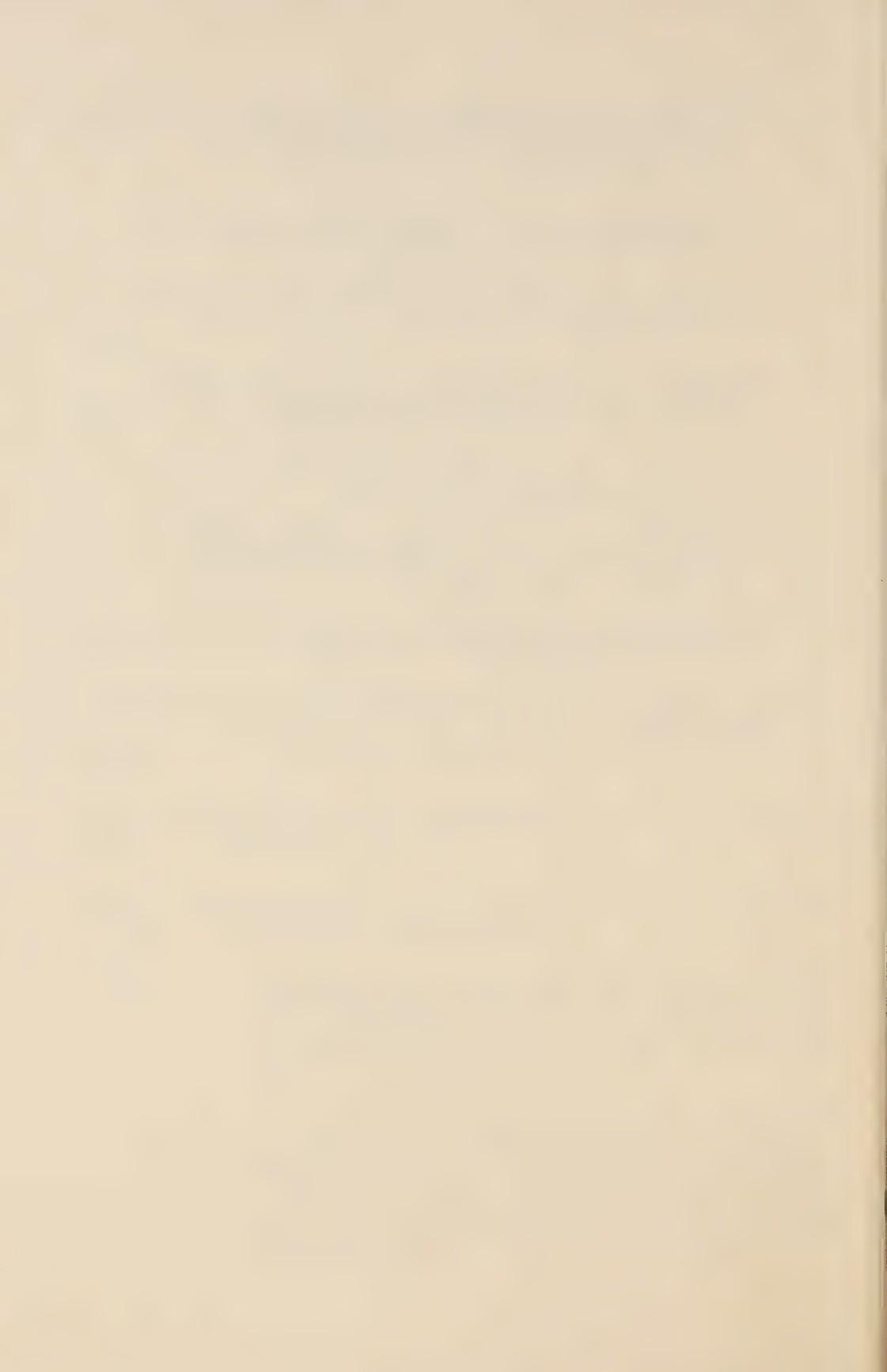
- 4.** Subsection 2 of section 8 of the said Act is repealed and the following substituted therefor:

Exception

(2) Subsection 1 does not apply to that part of Ontario at the head of Lake Ontario lying west of the east boundary of The Municipality of Metropolitan Toronto, but in that part the limits of all townships on either side of the Lake extend to the following described line:

Commencing at a point where the east boundary of The Municipality of Metropolitan Toronto meets the International Boundary; thence westerly along the line of the International Boundary to the point of its angle southerly; thence westerly in a straight line to and along the centre line of the Burlington Canal to its point of entry into Hamilton Harbour.

- 5.**—(1) This Act, except subsections 1 to 20, and 23 to 26 of section 1, subsection 1 and subsections 3 to 10 of section 2 and section 3, comes into force on the day it receives Royal Assent.
- (2) Subsections 23 and 24 of section 1 shall be deemed to have come into force on the 1st day of January, 1971.
- (3) Subsection 26 of section 1 and subsection 10 of section 2 shall be deemed to have come into force on the 1st day of January, 1972.
- (4) Subsections 17, 19, 20 and 25 of section 1 and subsections 3 to 9 of section 2 shall be deemed to have come into force on the 1st day of January, 1973.
- (5) Subsection 1 of section 2 shall be deemed to have come into force on the 1st day of March, 1973.
- (6) Subsections 1, 3, 4, 5, 7 to 16 and 18 of section 1 and section 3 shall be deemed to have come into force on the 1st day of January, 1974.
- (7) Subsections 2 and 6 of section 1 come into force on the 1st day of April, 1974.
- 6.** This Act may be cited as *The Territorial Division Amendment Act, 1974.*



BILL 14

An Act to amend
The Territorial Division Act

1st Reading

March 14th, 1974

2nd Reading

May 7th, 1974

3rd Reading

THE HON. J. WHITE
Treasurer of Ontario and Minister of
Economics and Intergovernmental
Affairs

(Reprinted as amended by
the Committee of the Whole House)

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BILL 14

Government
Publications

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

**An Act to amend
The Territorial Division Act**

THE HON. J. WHITE
Treasurer of Ontario and Minister of Economics
and Intergovernmental Affairs



TORONTO
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BILL 14**1974**

**An Act to amend
The Territorial Division Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.**—(1) Paragraph 5 of section 1 of *The Territorial Division Act*,<sup>s. 1,
par. 5,</sup> being chapter 458 of the Revised Statutes of Ontario, 1970,^{re-enacted} is repealed and the following substituted therefor:

5.—THE REGIONAL MUNICIPALITY OF DURHAM Durham

consists of the municipalities from time to time included within the Regional Area as defined in *The Regional Municipality of Durham Act, 1973*.^{c. 78}

- (2) Paragraph 12 of the said section 1 is repealed and the following substituted therefor:<sup>s. 1,
par. 12,
re-enacted</sup>

12.—THE REGIONAL MUNICIPALITY OF HALDIMAND-NORFOLK Haldimand-
Norfolk

consists of the municipalities from time to time included within the Regional Area as defined in *The Regional Municipality of Haldimand-Norfolk Act, 1973*.^{c. 96}

- (3) Paragraph 13 of the said section 1 is repealed and the following substituted therefor:<sup>s. 1,
par. 13,
re-enacted</sup>

13.—THE REGIONAL MUNICIPALITY OF HALTON Halton

consists of the municipalities from time to time included within the Regional Area as defined in *The Regional Municipality of Halton Act, 1973*.^{c. 70}

- (4) The said section 1 is amended by adding thereto the following paragraph:<sup>s. 1,
amended</sup>

Hamilton-Wentworth

13A.—THE REGIONAL MUNICIPALITY OF HAMILTON-WENTWORTH

consists of the municipalities from time to time included in the Regional Area as defined in *The Regional Municipality of Hamilton-Wentworth Act, 1973*.

s. 1,
par. 18(d),
re-enacted

- (5) Clause *d* of paragraph 18 of the said section 1 is repealed and the following substituted therefor:

(d) the townships of,	
Bathurst,	Montague,
Beckwith,	North Burgess,
Darling,	North Elmsley,
Drummond,	Pakenham,
Lanark,	Ramsay,
Lavant, Dalhousie and North Sherbrooke,	South Sherbrooke.

s. 1,
par. 23,
repealed

- (6) Paragraph 23 of the said section 1 is repealed.

s. 1,
par. 24(a),
amended

- (7) Clause *a* of paragraph 24 of the said section 1 is amended by adding at the end thereof "Port Hope".

s. 1,
par. 24(c),
amended

- (8) Clause *c* of paragraph 24 of the said section 1 is amended by inserting after "Hamilton" in the first column "Hope" and by striking out "South Monaghan" in the second column.

s. 1,
par. 25,
repealed

- (9) Paragraph 25 of the said section 1 is repealed.

s. 1,
par. 28,
re-enacted

- (10) Paragraph 28 of the said section 1 is repealed and the following substituted therefor:

Peel

28.—THE REGIONAL MUNICIPALITY OF PEEL

consists of the municipalities from time to time included within the Regional Area as defined in *The Regional Municipality of Peel Act, 1973*.

s. 1,
par. 30(b),
amended

- (11) Clause *b* of paragraph 30 of the said section 1 is amended by inserting after "Lakefield" in the first line "Millbrook".

s. 1,
par. 30(c),
amended

- (12) Clause *c* of paragraph 30 of the said section 1 is amended by inserting after "Burleigh and Anstruther" in the first column "Cavan" and by inserting after "Smith" in the second column "South Monaghan".

s. 1,
par. 35(b),
amended

- (13) Clause *b* of paragraph 35 of the said section 1 is amended by adding at the end thereof "Wasaga Beach".

- (14) Clause *c* of paragraph 35 of the said section 1 is amended <sup>s. 1,
par. 35(c),
amended</sup> by striking out "Wasaga Beach" in the third line.
- (15) Clause *d* of paragraph 35 of the said section 1 is amended <sup>s. 1,
par. 35(d),
amended</sup> by inserting after "Innisfil" in the first column "Mara" and by inserting after "Oro" in the second column "Rama".
- (16) Clause *c* of paragraph 38 of the said section 1 is amended <sup>s. 1,
par. 38(c),
amended</sup> by inserting after "Laxton, Digby and Longford" in the second column "Manvers".
- (17) Paragraph 39 of the said section 1 is repealed and the <sup>s. 1,
par. 39,
re-enacted</sup> following substituted therefor:

39.—THE REGIONAL MUNICIPALITY OF WATERLOO Waterloo

consists of the municipalities from time to time included ^{1972, c. 105} within the Regional Area as defined in *The Regional Municipality of Waterloo Act, 1972*.

- (18) Paragraph 41 of the said section 1 is repealed. <sup>s. 1,
par. 41,
repealed</sup>
- (19) Paragraph 45 of the said section 1 is amended by re-lettering clause *a* as clause *aa* and by adding thereto the following clause: <sup>s. 1,
par. 45,
amended</sup>
- (a) the City of Timmins.
- (20) Clause *aa* of paragraph 45 of the said section 1, as relettered by subsection 19, is amended by striking out "Timmings" in the second line. <sup>s. 1,
par. 45 (aa),
amended</sup>
- (21) Clause *b* of paragraph 45 of the said section 1 is amended <sup>s. 1,
par. 45 (b),
amended</sup> by inserting after,
- (a) "Adair" in the first column "Adams";
 - (b) "Belford" in the first column "Ben Nevis";
 - (c) "Beniah" in the first column "Benoit";
 - (d) "Birdsall" in the first column "Bisley, Black, Blackstock";
 - (e) "Eilber" in the first column "Eldorado";
 - (f) "Pliny" in the first column "Pontiac";
 - (g) "Poulett" in the first column "Price";

s. 1,
par. 45,
amended

- (h) "Jessop" in the second column "Keefer";
- (i) "Clergue" in the third column "Clifford";
- (j) "Dempsay" in the third column "Denton";
- (k) "Langemarck" in the third column "Langmuir";
- (l) "McCuaig" in the third column "McEvay";
- (m) "McQuibban" in the third column "Melba";
- (n) "Thorning" in the third column "Thornloe, Timmins"; and
- (o) "Tolmie" in the third column "Tolstoi".

(22) The description immediately following clause *b* of paragraph 45 of the said section 1 is amended by striking out "Dokis" in the sixteenth line and inserting in lieu thereof "Pontiac", by striking out "Whitesides" in the seventeenth line and inserting in lieu thereof "Keefer" and by striking out "Township of Whitesides to the northwest corner thereof" in the eighteenth and nineteenth lines and inserting in lieu thereof "townships of Keefer and Whitesides to the northwest corner of the Township of Whitesides".

s. 1,
par. 49(c),
amended

(23) Clause *c* of paragraph 49 of the said section 1 is amended by inserting after "Field" in the third column "Finlayson (part)".

s. 1,
par. 49,
amended

(24) The description immediately following clause *c* of paragraph 49 of the said section 1 is amended by striking out "southwesterly corner of the last-mentioned township; thence northerly along the westerly boundary of the Township of Finlayson to the northwesterly corner thereof; thence easterly along the northerly boundary of the Township of Finlayson in the Territorial District of Nipissing" in the sixty-first, sixty-second, sixty-third, sixty-fourth and sixty-fifth lines and inserting in lieu thereof "easterly limit of the Township of Lake of Bays; thence northerly along the easterly boundary of the Township of Lake of Bays to the north-easterly corner thereof; thence westerly along the north-easterly boundary of the Township of Lake of Bays in the Territorial District of Muskoka".

s. 1,
par. 52(a, b),
re-enacted

(25) Clauses *a* and *b* of paragraph 52 of the said section 1 are repealed and the following substituted therefor:

(a) The Regional Municipality of Sudbury composed of the municipalities from time to time included

within the Regional Area as defined in *The Regional Municipality of Sudbury Act, 1972*^{1972, c. 104};

- (b) the towns of Espanola, Massey, Webbwood.
 - (26) Clause *a* of paragraph 54 of the said section 1 is amended <sup>s. 1,
par. 54(a),
amended</sup> by inserting after "Haileybury" in the first line "Kirkland Lake".
 - (27) Clause *c* of paragraph 54 of the said section 1 is amended <sup>s. 1,
par. 54(c),
amended</sup> by striking out "Adams", "Ben Nevis", "Benoit", "Eldorado", "Keefer" and "Langmuir" in the first column, by striking out "Bisley", "Black", "Blackstock", "McEvay" and "Melba" in the second column and by striking out "Clifford", "Denton", "Pontiac", "Price", "Thorneloe", "Timmmins" and "Tolstoi" in the third column.
 - (28) The description immediately following clause *c* of paragraph 54 of the said section 1 is amended by striking out "Pharand, Hillary and Keefer" in the twenty-second line and inserting in lieu thereof "Pharand and Hillary" and by striking out "north" in the twenty-fourth line and inserting in lieu thereof "south".
- 2.—(1) Clause *a* of paragraph 1 of section 2 of the said Act <sup>s. 2,
par. 1(a),
re-enacted</sup> is repealed and the following substituted therefor:
- (a) the improvement districts of the North Shore and White River.
 - (2) Clause *b* of paragraph 1 of the said section 2 is amended <sup>s. 2,
par. 1(b),
amended</sup> by striking out "Macdonald and Meredith" in the second column and inserting in lieu thereof "Macdonald, Meredith and Aberdeen Additional".
 - (3) Clause *a* of paragraph 2 of the said section 2 is <sup>s. 2,
par. 2(a),
repealed</sup> repealed.
 - (4) Clause *b* of paragraph 2 of the said section 2 is <sup>s. 2,
par. 2(b),
re-enacted</sup> repealed and the following substituted therefor:
 - (b) the townships of,

Black River-Matheson,	Kendrey,
Fauquier,	Owens, Williamson and
Glackmeyer,	Idington,
	Shackleton and Machin.

- (5) Clause *a* of paragraph 3 of the said section 2 is <sup>s. 2,
par. 3(a),
amended</sup> amended by striking out "Ear Falls" in the first and second lines.

s. 2,
par. 3(b),
re-enacted

- (6) Clause *b* of paragraph 3 of the said section 2 is repealed and the following substituted therefor:

(b) the townships of,

Ear Falls,	Machin,
Ignace,	Red Lake,
Jaffray and Melick,	

s. 2,
par. 8(a),
repealed

- (7) Clause *a* of paragraph 8 of the said section 2 is repealed.

s. 2,
par. 8(b),
re-enacted

- (8) Clause *b* of paragraph 8 of the said section 2 is repealed and the following substituted therefor:

(b) the townships of,

Baldwin,	Cosby, Mason and	Nairn,
Casimir, Jennings	Martland,	Ratter and Dunnet,
and Appleby,	Hagar,	Salter, May and
Chapleau,	Hallam,	Harrow.

s. 2,
par. 10(a),
re-enacted

- (9) Clause *a* of paragraph 10 of the said section 2 is repealed and the following substituted therefor:

(a) the Improvement District of Gauthier.

s. 2,
par. 10(b),
amended

- (10) Clause *b* of paragraph 10 of the said section 2 is amended by striking out "Teck" in the third column.

s. 4(1),
par. 3,
repealed

- 3.** Paragraph 3 of subsection 1 of section 4 of the said Act is repealed.

s. 8(2),
re-enacted

- 4.** Subsection 2 of section 8 of the said Act is repealed and the following substituted therefor:

Exception

(2) Subsection 1 does not apply to that part of Ontario at the head of Lake Ontario lying west of the east boundary of The Municipality of Metropolitan Toronto, but in that part the limits of all townships on either side of the Lake extend to the following described line:

Commencing at a point where the east boundary of The Municipality of Metropolitan Toronto meets the International Boundary; thence westerly along the line of the International Boundary to the point of its angle southerly; thence westerly in a straight line to and along the centre line of the Burlington Canal to its point of entry into Hamilton Harbour.

- 5.—(1) This Act, except subsections 1 to 20, and 23 to 26^{Commencement} of section 1, subsection 1 and subsections 3 to 10 of section 2 and section 3, comes into force on the day it receives Royal Assent.
- (2) Subsections 23 and 24 of section 1 shall be deemed to^{Idem} have come into force on the 1st day of January, 1971.
- (3) Subsection 26 of section 1 and subsection 10 of section^{Idem} 2 shall be deemed to have come into force on the 1st day of January, 1972.
- (4) Subsections 17, 19, 20 and 25 of section 1 and sub-^{Idem} sections 3 to 9 of section 2 shall be deemed to have come into force on the 1st day of January, 1973.
- (5) Subsection 1 of section 2 shall be deemed to have come^{Idem} into force on the 1st day of March, 1973.
- (6) Subsections 1, 3, 4, 5, 7 to 16 and 18 of section 1 and^{Idem} section 3 shall be deemed to have come into force on the 1st day of January, 1974.
- (7) Subsections 2 and 6 of section 1 come into force on^{Idem} the 1st day of April, 1974.

6. This Act may be cited as *The Territorial Division Amend-* ^{Short title}
ment Act, 1974.

BILL 14

An Act to amend
The Territorial Division Act

1st Reading

March 14th, 1974

2nd Reading

May 7th, 1974

3rd Reading

May 7th, 1974

THE HON. J. WHITE
Treasurer of Ontario and Minister of
Economics and Intergovernmental
Affairs

CA2ON

BILL 15**Private Member's Bill**

XB

-B 56

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974**An Act respecting the Rights of Labour**

MR. DREA

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The purpose of the Bill is to establish a set of safeguards to protect individual members of trade unions.

BILL 15**1974**

An Act respecting the Rights of Labour

WHHEREAS it is in the public interest of the Province Preamble of Ontario to provide for the disclosure of financial transactions and administrative practices of trade unions and employers or employers' organizations; to prevent abuses in the administration of trusteeships by trade unions and to provide for standards with respect to officers of trade unions;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I

INTERPRETATION

1.—(1) In this Act,

Interpre-
tation

(a) “associate” where used to indicate a relationship with any person means,

(i) any spouse, son or daughter of that person, or

(ii) any relative of such person or of his spouse other than a relative referred to in sub-clause i, who has the same home as such person;

(b) “collective agreement” means an agreement in writing between an employer or an employers’ organization, on the one hand, and a trade union that, or a council of trade unions that, represents employees of the employer or employees of members of the employers’ organization, on the other hand, containing provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer, the employers’ organization, the trade union or the employees;

(c) "employers' organization" means an organization of employers formed for purposes that include the regulation of relations between employers and employees and includes an accredited employers' organization;

(d) "local" means a subdivision of a trade union;

(e) "member", when used with reference to a trade union, includes a person who,

(i) has applied for membership in the trade union, and

(ii) has paid to the trade union on his own behalf an amount of at least \$1 in respect of initiation fees or monthly dues of the trade union,

and "membership" has a corresponding meaning;

(f) "Minister" means the Minister of Labour;

(g) "officer" means any person authorized by the constitution of a trade union to perform the functions of president, vice-president, secretary, treasurer, or other executive functions of a labour organization, and any member of its executive board or similar governing body;

R.S.O. 1970,
c. 426

(h) "security" has the same meaning as in *The Securities Act*;

(i) "trade union" means an organization of employees formed for purposes that include the regulation of relations between employees and employers and includes a provincial, national or international trade union and a certified council of trade unions.

PART II

RIGHTS OF MEMBERS

Rights
of
members

2. Every member of a trade union shall have the same rights and privileges to nominate candidates, to vote in elections or referendums of the trade union, to receive notice of and to attend meetings of members and to participate in the deliberations and vote upon the business of such meetings as any other member subject to reasonable rules and regulations in the constitution and by-laws of the trade union.

3. The schedule of dues and initiation fees payable by members of a trade union in effect on the day that this Act comes into force shall not be increased, and no general or special assessment shall be levied, except, ^{Dues and initiation fees}

- (a) by majority vote by secret ballot of the members in good standing at a meeting duly called, constituted and held for that purpose; or
- (b) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot.

4.—(1) No trade union shall limit the right of any member to institute an action in any court or in a proceeding before any administrative board, agency or tribunal notwithstanding that the trade union or any officer thereof are named as defendants or respondents in such action or proceeding. ^{Prohibitions}

(2) No trade union shall limit the right of any member ^{Idem} to appear as a witness in any judicial, administrative or legislative proceeding or to petition any legislature or a member thereof.

(3) For the purposes of subsections 1 and 2 any member ^{Idem} may be required by the constitution and by-laws of a trade union to exhaust reasonable hearing procedures (but not to exceed a period of one month in time) within such trade union before instituting legal or administrative proceeding against such trade union or any officer thereof.

(4) For the purposes of subsection 1 and 2 no employer ^{Idem} or employee organization shall directly or indirectly finance or otherwise encourage, or participate in any such action or proceeding except as a party thereto.

5.—(1) No disciplinary action of any kind may be taken ^{Hearing} against any member of a trade union without a full and fair hearing except for non-payment of dues unless such member,

- (a) has received reasonable notice of a hearing, stating the time, place and purpose of the hearing;
- (b) has been furnished prior to the hearing reasonable information of any allegations.

Idem (2) For the purposes of a hearing required by subsection 1 a member may,

- (a) be represented by counsel or an agent;
- (b) call and examine witnesses and present his arguments and submissions;
- (c) conduct cross-examinations of witnesses.

Idem (3) A hearing shall be open to the public.

Conflict **6.** Notwithstanding section 8, where there is a conflict with any provision of the constitution or by-laws of any trade union and this Act, the provisions of this Act prevail.

County court **7.** Any person whose rights under this Act are infringed by any violation of this Act may bring an action in the county court.

No limitation of existing rights **8.** Nothing contained in this Act shall limit the rights of any member of a trade union under any statute of the Parliament of Canada or the Province of Ontario or before any court or tribunal, or under the constitution and by-laws of any trade union.

Responsibility of trade union **9.** It shall be the responsibility of every trade union to advise members of their rights under this Act.

PART III

DISCLOSURE AND REPORTING

Constitution and by-laws **10.—(1)** Every trade union and every local of a trade union shall adopt a constitution and by-laws and shall file a copy thereof with the Minister, together with a report, signed by its president and secretary or corresponding officers, containing the following information,

- (a) the name of the trade union, its mailing address, the address of its principal office;
- (b) name and title of each officer;
- (c) a complete schedule of all fees and dues, and other periodic payments;
- (d) a detailed statement of provision for and procedures followed with respect to,

- (i) qualifications for and restrictions on membership,
- (ii) levying of assessments,
- (iii) participation in insurance or other benefit plans,
- (iv) authorization for disbursement of the trade union,
- (v) audits,
- (vi) calling and convening special and general meetings of members,
- (vii) election of officers and any other representatives,
- (viii) discipline or removal of officers or other representatives for breach of trust,
- (ix) disciplinary measures with respect to members including provision for notice, hearings and appeals,
- (x) authorization for bargaining demands,
- (xi) ratification of contracts,
- (xii) authorization for strikes and work stoppages,
- (xiii) issuance of work permits.

(2) Every trade union and every local of any trade union shall report any change in the information required by subsection 1 to the Minister within sixty days of the date such change occurred. ^{Idem}

11.—(1) Every trade union and every local of any trade union shall file annually with the Minister a financial report signed by its president and treasurer or corresponding municipal officers containing the following information in such detail as in the opinion of the Minister as may be necessary to disclose its financial condition and operations for its preceding fiscal year. ^{Financial report}

- (a) assets and liabilities at the beginning and end of the fiscal year;
- (b) receipts of any kind and the sources thereof;

- (c) salary, allowances and other direct or indirect disbursements (including reimbursed expenses) to each officer and also to each employee who, during such fiscal year, received more than \$1,000 in the aggregate from such trade union and any other trade union or local thereof with which it is affiliated or which is affiliated with the same national or international labour organization;
- (d) direct or indirect loans made to any officer, employee or member together with a statement of the purpose, security, if any, and arrangement for repayment;
- (e) direct or indirect loans to any business enterprise, together with a statement of the purpose, security, if any, and arrangements for repayment;
- (f) other disbursements made by it including the purposes thereof,

in such form as the Minister may prescribe.

Idem

- (2) Every trade union required to submit a report under this section shall make available the information required to be contained therein to all of its members and every trade union or local thereof shall permit any member to examine any books, records and accounts necessary to verify such report.

PART IV

INSIDER REPORTING

Report to
Minister

- 12.**—(1) Every officer or employee of a trade union (other than an employee performing exclusively clerical services) and every associate of such person shall file with the Minister a signed report listing and describing for the preceding fiscal year,

- (a) any security which such officer, employee or associate directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) derived directly or indirectly from an employer or employers' organization whose employees such trade union represents or is seeking to represent, except payments and other benefits received as a *bona fide* employee of such employer;

- (b) any transaction in which such officer, employer or associate engaged, directly or indirectly, involving any security or loan to or from, or other interest in the business of an employer or employers' organization whose employees such trade union represents or is seeking to represent;
- (c) any security or other interest which such officer, employee or associate directly or indirectly held in, and any income or other benefit with monetary value (including reimbursed expenses) derived from, any business a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with, the business of an employer or employers' organization whose employees such trade union represents or is seeking to represent;
- (d) any security or other interest which such officer, employee or associate held in, and any income or other benefit with monetary value (including reimbursed expenses) derived from a business any part of which consists of buying from, or selling or leasing, directly or indirectly, to otherwise dealing with such trade union;
- (e) any direct or indirect business transaction or arrangement between an officer employee or associate and any employer or employers' organization whose employees his organization represents or is seeking to represent except work performed and payments and benefits received as a *bona fide* employee of such employer or employers' organization and except purchases and sales of goods or services in the regular course of business at prices available to any employees of such employer or employers' organization.

13. Every employer or employers' organization who in any fiscal year made,

Report re
loans,
payments,
etc.

- (a) any payment or loan, direct or indirect, of money or other thing of value (including reimbursed expenses), or any promise or agreement therefor, to any trade union or to any officer or other representative or employee of a trade union or to any person associated with any officer, representative or employee of a trade union except payments or loans made by a bank to which The *Bank Act* (Canada) applies or a loan corporation or trust company registered under *The Loan and*

R.S.C. 1970.
c. B-1
R.S.O. 1970.
cc. 254, 224

Trust Corporations Act, or an insurance company licensed under The Insurance Act;

- (b) any payment (including reimbursed expenses) to any employee, or any group or committee of such employees, for the purpose of causing such employees to exercise or not to exercise or as the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing;
- (c) any expenditure where an object thereof directly or indirectly is to interfere with, restrain or coerce employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing or is to obtain information concerning the activities of employees or a trade union in connection with a labour dispute involving such employer or employers' organization except for use in conjunction with an administrative or judicial proceeding;
- (d) any agreement or arrangement with a labour relations consultant or other independent contractor or organization pursuant to which such person undertakes activities the object of which, directly or indirectly, is to persuade employees to exercise or not to exercise or as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing, or undertakes to supply information concerning the activities of employees or a trade union in connection with a labour dispute involving such employer except for use in conjunction with an administrative or judicial proceeding,

shall file with the Minister, a report signed by its president and treasurer or corresponding principal officers showing in detail the date and amount of each such payment, loan, promise, agreement or arrangement and the name, address, and position, if any, in any firm or trade union of the person to whom it was made and a full explanation of the circumstances of all such payments, including the terms of any agreements or understanding pursuant to which they were made.

Report re
agreements
or arrangements

14. Every person who pursuant to any agreement or arrangement with an employer or employers' organization undertakes activities the object of which, directly or indirectly, is,

- (a) to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or
- (b) to supply an employer or employers' organization with information concerning the activities of employees or a trade union in connection with a labour dispute involving such employer, except information for use in conjunction with an administrative or judicial proceeding,

shall file, within thirty days after entering into such agreement or arrangement, a report with the Minister containing a detailed statement of the terms and conditions of such agreement or arrangement.

15.—(1) Nothing contained in section 13 or section 14 Where report not required shall be construed to require any employer or employers' organization to file a report covering the services of such person by reason of his giving or agreeing to give advice to such employer or representing or agreeing to represent such employer before any court, administrative agency or tribunal or engaging or agreeing to engage in collective bargaining on behalf of such employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder.

(2) Nothing contained in section 13 or section 14 shall ^{Idem} be construed to require any regular officer, supervisor, or employee of an employer to file a report in connection with services rendered to such employer nor shall any employer be required to file a report covering expenditures made to any regular officer, supervisor or employee as compensation for service as a regular officer, supervisor or employee of such employer.

16.—(1) Every person who, knowingly,

Offences

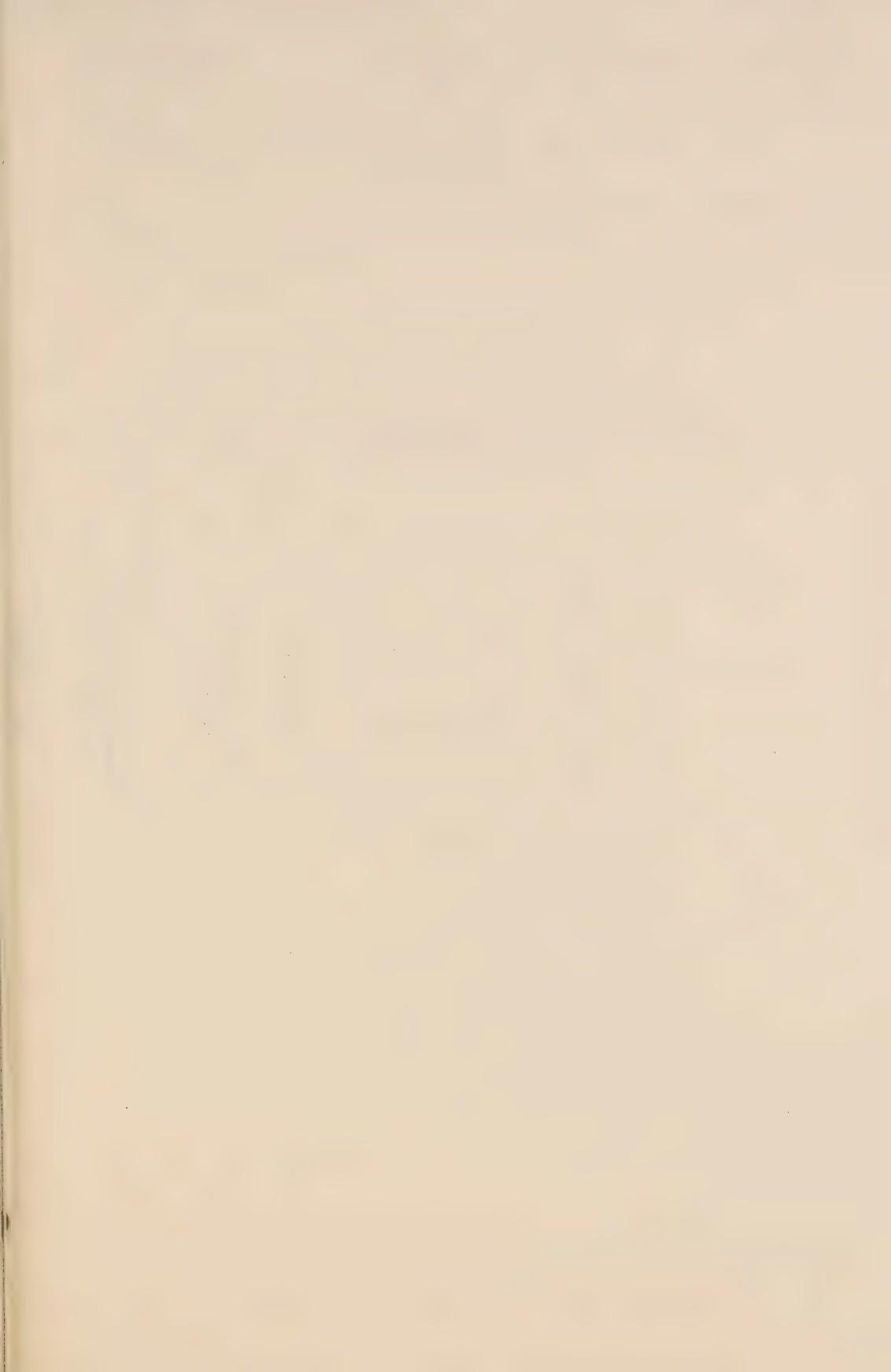
- (a) furnishes false information in any application under this Act or in any statement or return required to be furnished under this Act;
- (b) fails to comply with any order, direction or other requirement made under this Act; or
- (c) contravenes any provision of this Act,

and every director or officer of a corporation who knowingly concurs in such furnishing, failure or contravention is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

Corporations (2) Where a corporation is convicted of an offence under subsection 1, the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided therein.

Commencement **17.** This Act comes into force on the day it receives Royal Assent.

Short title **18.** This Act may be cited as *The Rights of Labour Act, 1974.*



BILL 15

An Act respecting
the Rights of Labour

1st Reading

March 15th, 1974

2nd Reading

3rd Reading

MR. DREA

(*Private Member's Bill*)

CAZON

XB

-B 56

BILL 16

Private Member's Bill

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

**An Act to provide for the Establishment
of Safety Committees**

MR. HAGGERTY



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

Self-explanatory.

BILL 16**1974**

**An Act to provide
for the Establishment of Safety Committees**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act, "Minister" means the Minister of Labour. Interpre-
tation
2. Every industry shall establish a safety committee which Safety
committee
established shall have equal representation from both the employers and employees in the industry.
3. Every safety committee, upon the request of the Duties of
safety
committee Minister, shall advise him respecting the safety of workers in the industry which it represents and, without restricting the generality of the foregoing, inquire into and advise him upon any laws respecting the safety of workers in the industry with a view to the improvement, clarification or extension of the existing laws or the enactment of new laws or inquire into and advise him upon any matter designed to co-ordinate the functions of all bodies concerned with the safety of workers.
4. Where an accident or injury occurs on a job site, the Notification
where
accident
or injury foreman or person in charge of the job site shall forthwith notify the safety committee representing the particular industry that an accident or injury has occurred.
5. Where a safety committee receives a report concerning Idem an accident or injury on a job site, the committee shall report in writing to the Minister that an accident or injury has occurred and outline any recommendations it may have as to the future prevention of a similar accident or injury.
6. This Act comes into force on the day it receives Royal Commencement Assent.
7. This Act may be cited as *The Safety Committees Act*, Short title 1974.

An Act to provide for the
Establishment of Safety Committees

1st Reading

March 15th, 1974

2nd Reading

3rd Reading

MR. HAGGERTY

(*Private Member's Bill*)

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

**An Act to relieve Persons from
Liability in respect of Voluntary
Emergency Medical and First Aid Services**



MR. HAGGERTY

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The purpose of this Bill is to relieve persons from liability in respect of voluntary emergency first aid assistance or medical services rendered at or near the scene of an accident or other sudden emergency.

BILL 17**1974**

**An Act to relieve Persons from
Liability in respect of Voluntary
Emergency Medical and First Aid Services**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "physician" means a legally qualified medical practitioner;
- (b) "registered nurse" means a person who is registered as a nurse under *The Nurses Act*.

R.S.O. 1970,
c. 301

2. Where, in respect of a person who is ill, injured or unconscious as the result of an accident or other sudden emergency,

Relief from
liability for
damages

- (a) a physician or registered nurse voluntarily and without expectation of compensation or reward renders emergency medical services or first aid assistance and such services or assistance are not rendered at a hospital or other place having adequate medical facilities and equipment; or
- (b) a person other than a person mentioned in clause *a* voluntarily renders emergency first aid assistance and such assistance is rendered at the immediate scene of the accident or emergency,

the physician, registered nurse or other person shall not be liable for damages for injuries to or the death of such person alleged to have been caused by an act or omission on his part in rendering the medical services or first aid assistance, unless such acts constitute wilful or wanton misconduct on his part.

3. Nothing in section 2 shall be deemed to relieve a physician from liability for damages for injuries to or the death of any

Act does
not apply
to normal
medical
services

person caused by an act or omission on the part of the physician in respect of medical services rendered by him in the normal and ordinary course of his practice and not under the circumstances set forth in section 2.

Commencement

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. This Act may be cited as *The Good Samaritan Act, 1974.*

An Act to relieve Persons from Liability in
respect of Voluntary Emergency Medical
and First Aid Services

1st Reading

March 15th, 1974

2nd Reading

3rd Reading

MR. HAGGERTY

(*Private Member's Bill*)

CAZON

X3

-B 56

BILL 18

Private Member's Bill

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

An Act to amend The Beds of Navigable Waters Act



MR. HAGGERTY

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The purpose of this Bill is to provide a uniform interpretation of deeds of property bounded by navigable water so that the high water mark shall be deemed to be the boundary of such property.

BILL 18**1974**

**An Act to amend
The Beds of Navigable Waters Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.**—(1) *The Beds of Navigable Waters Act*, being chapter 41 of the ^{Act, amended} Revised Statutes of Ontario, 1970, is amended by renumbering section 1 as section 1^a and by adding thereto the following section:

1. In this Act,

Interpre-
tation

(a) “bed” used in relation to a navigable body of water shall include all land and land under water lying below the high water mark; and

(b) “high water mark” shall mean the level at which the water in a navigable body of water has been held for a period sufficient to leave a watermark along the bank of such navigable body of water.

- (2) Section 1^a of the said Act, as renumbered by subsection 1,^{s. 1a, amended} is amended by adding thereto the following subsections:

(2) Where in any patent, conveyance or deed from the ^{Where} Crown made either heretofore or hereafter, the boundary ^{boundary} of any land is described as a navigable body of water or the ^{navigable} water edge, bank, beach, shore, shoreline or high water mark thereof or in any other manner with relation thereto, such boundary shall be deemed always to have been the high water mark of such navigable body of water.

(3) The Minister of Natural Resources may, upon the ^{Minister may fix} recommendation of the Surveyor General, fix the high ^{high} water mark of any navigable body of water or any part thereof, and his decision shall be final and conclusive.

s. 2,
amended

- 2.** Section 2 of the said Act is amended by striking out "Section 1" in the first line and inserting in lieu thereof "Section 1a".
- 3.** This Act comes into force on the day it receives Royal Assent.
- 4.** This Act may be cited as *The Beds of Navigable Waters Amendment Act, 1974.*

Commencement

Short title

BILL 18

An Act to amend
The Beds of Navigable Waters Act

1st Reading

March 25th, 1974

2nd Reading

3rd Reading

MR. HAGGERTY

(*Private Member's Bill*)

Ont. Legislative Assembly

Government
Publications

CAZON

X3

-B 56

BILL 19

Private Member's Bill

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

An Act to establish The Ontario Bill of Rights

MR. ROY



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTES

This Bill will provide for an Ontario Bill of Rights. The Canadian Bill of Rights enacted by the Parliament of Canada in 1960 provides for the protection of certain human rights and fundamental freedoms but its effectiveness is limited by the fact that it operates only within the fields of the federal Parliament's constitutional authority. The Ontario Bill of Rights is intended to provide for the protection of those same human rights and fundamental freedoms so that, in Ontario, those rights and freedoms will have protection in both provincial and federal fields of legislative jurisdiction. The result will be to have those rights and freedoms protected in Ontario under a single legislative shield consisting of the Canadian Bill of Rights and The Ontario Bill of Rights.

The effect of the Bill will be to have the Legislature, out of its respect for those rights and freedoms, limit its powers to enact statutes and regulations.

BILL 19**1974**

**An Act to establish
The Ontario Bill of Rights**

WHEREAS the free and democratic society existing in Preamble Ontario is founded upon principles, fostered by tradition, that honour and respect human rights and fundamental freedoms and the dignity and worth of the human person; and whereas the Parliament of Canada, being desirous of enshrining certain principles and the human rights and fundamental freedoms derived from them, enacted the Canadian Bill of Rights in order to ensure the protection of those rights and freedoms in Canada in matters coming within its legislative authority; and whereas the Legislature of Ontario, affirming those principles and recognizing the need to ensure the protection of those rights and freedoms in Ontario in matters coming within its legislative authority, desires to enact The Ontario Bill of Rights.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. It is hereby recognized and declared that in Ontario Declaration of rights and fundamental freedoms there exist, without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,

- (a) the right of the individual to liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;
- (b) the right of the individual to equality before the law and the protection of the law;
- (c) freedom of religion;
- (d) freedom of speech;
- (e) freedom of assembly and association; and

(f) freedom of the press.

Construction and application of statutes and regulations 2. Every statute and regulation of Ontario shall, unless it is expressly declared by an Act of the Legislature that it operates notwithstanding this Act, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared.

Rights preserved 3.—(1) Nothing in this Act shall be construed to abrogate or abridge any human right or fundamental freedom not enumerated herein that may have existed in Ontario at the commencement of this Act.

Jurisdiction of Legislature 2. The provisions of this Act shall be construed as extending only to matters coming within the legislative authority of the Legislature of Ontario.

Notice to Attorney General 4.—(1) Where in any action or other proceeding a question arises as to whether any law of Ontario abrogates, abridges or infringes, or authorizes the abrogation, abridgment or infringement, of any of the rights and freedoms herein recognized and declared, no adjudication on that question is valid unless notice has been given to the Attorney General.

Attorney General may appear 2. Where the Attorney General has notice under subsection 1, he may, in person or by counsel, appear and participate in that action or proceeding on such terms and conditions as the court, person or body conducting the proceeding may consider just.

Law of Ontario defined 5. In this Act, “law of Ontario” means,

- (a) any Act of the Legislature of Ontario enacted before, on or after the commencement of this Act; and
- (b) any order, rule or regulation made or approved by the Lieutenant Governor in Council or by a Minister of the Crown before, on or after the commencement of this Act.

Commencement 6. This Act comes into force on the day it receives Royal Assent.

Short title 7. This Act may be cited as *The Ontario Bill of Rights, 1974*.

BILL I

An Act to establish
The Ontario Bill of Rights

1st Reading

March 26th, 1974

2nd Reading

3rd Reading

MR. ROY

(*Private Member's Bill*)

XB
-B56

BILL 20

Government
Billions

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

Legislative Assembly
=

An Act to amend
The Farm Products Grades and Sales Act

THE HON. W. A. STEWART
Minister of Agriculture and Food



EXPLANATORY NOTES

SECTIONS 1 AND 2. Complementary to section 3 of the Bill.

BILL 20**1974**

**An Act to amend
The Farm Products Grades and Sales Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of *The Farm Products Grades and Sales Act*, being<sup>s. 1.
re-enacted</sup> chapter 161 of the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1972, chapter 37, section 1, is repealed and the following substituted therefor:

1. In this Act,

Interpre-
tion

(a) “Arbitration Board” means the Produce Arbitration Board established under this Act;

(b) “Board” means the Produce Licence Review Board established under this Act;

(c) “contracting party” means,

(i) a producer of farm products who has entered into a contract with a licensee, or

(ii) a licensee who has entered into a contract with a producer of farm products,

respecting the marketing of any farm product;

(d) “controlled-atmosphere fruit” means fruit that has been stored in a sealed compartment of a controlled-atmosphere storage plant for a period of at least ninety days from the date of the sealing thereof where the oxygen content of the air in the sealed compartment did not exceed 5 per cent during the storage;

(e) “controlled-atmosphere storage plant” means premises and buildings constructed and equipped

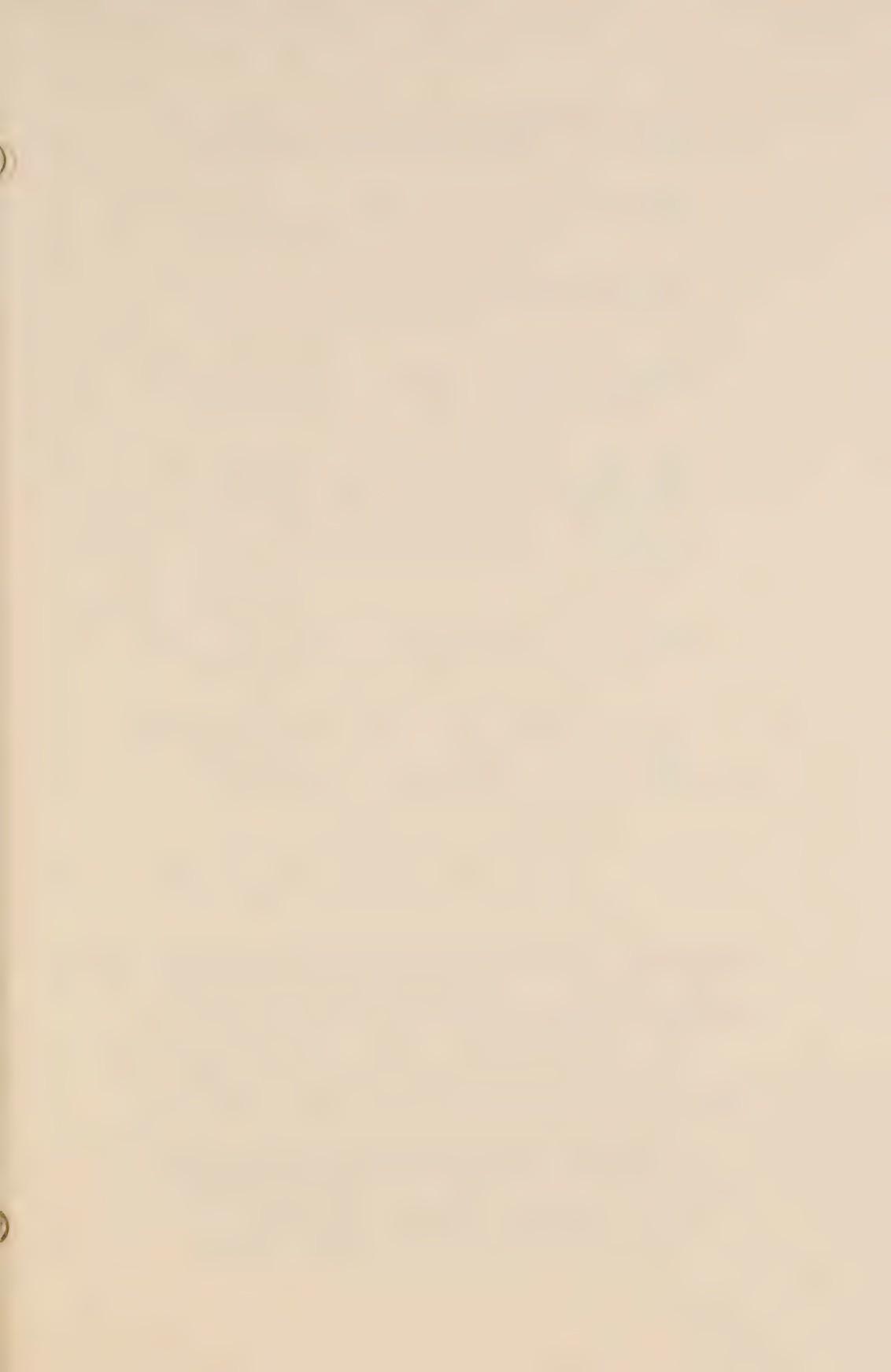
for cold storage of fruit in sealed compartments within which the oxygen content of the air is mechanically controlled;

- (f) "dealer" means a person who purchases or accepts for sale a farm product from the producer thereof, other than a person who purchases a farm product for his own consumption;
- (g) "Director" means the Director of the Farm Products Inspection Branch of the Ministry of Agriculture and Food;
- (h) "farm product" means such animals, animal products, Christmas trees, fruit, fruit products, grains, honey, maple products, seeds, tobacco, vegetables, vegetable products, wood or any class thereof and articles of food or drink manufactured or derived in whole or in part from any of those products as are designated in the regulations;
- (i) "grade" means, except in subsection 4 of section 2, a grade established under this Act;
- (j) "grader" means a grader appointed under this Act;
- (k) "inspector" means an inspector appointed under this Act;
- (l) "licence" means a licence issued under this Act and "licensee" has a corresponding meaning;
- (m) "marker" means a marker issued under this Act;
- (n) "Minister" means the Minister of Agriculture and Food;
- (o) "motor vehicle" means a motor vehicle as defined in *The Highway Traffic Act*;
- (p) "package" includes any box, crate or other receptacle used for or suitable for use in the marketing, transporting or shipping of a farm product;
- (q) "regulations" means the regulations made under this Act.

R.S.O. 1970,
c. 202

s.2(1)(m-p),
re-enacted

2. Clauses *m*, *n*, *o* and *p* of subsection 1 of section 2 of the said Act are repealed and the following substituted therefor:



SECTION 3. At present, licensing under the Act of various persons engaged in dealing in farm products is provided for in the regulations. The Bill revokes the power to make regulations respecting most of the licensing procedures (section 2) and incorporates such procedures in substantive provisions of the Act (new sections 9*c* to 9*g*).

Provision is made for a Produce Licence Review Board to which appeals can be made from decisions of the Director. Provision is also made for a further appeal from the Board to the courts (new sections 9*h*, 9*i*, 9*j* and 9*k*).

The Bill also provides for the establishment of the Produce Arbitration Board to arbitrate disputes arising out of contracts entered into in respect of the marketing of farm products. Provision is made for an appeal to the courts from an award of the Board (new sections 9*l*, 9*m* and 9*n*).

- (m) providing for the manner of issuing licences and prescribing their duration and the fees payable therefor;
- (n) prescribing the terms and conditions on which licences are issued;
- (o) prescribing grounds for refusal to renew, suspension or revocation of licences in addition to the grounds mentioned in section 9b or 9d;
- (p) providing for the issuing of markers for motor vehicles owned or leased by persons licensed as dealers and prescribing the fees payable therefor;
- (pa) prohibiting any person licensed as a dealer from transporting any farm product in a motor vehicle upon a highway in Ontario unless a marker has been issued respecting the vehicle and requiring any markers to be displayed in such manner as may be prescribed;
- (pb) requiring removal of any marker issued to a person whose licence as a dealer has been suspended or revoked;
- (pc) prescribing the form of and conditions in the bill of lading to be used in transporting or shipping a farm product in respect of which a bill of lading is not required under *The Public Commercial Vehicles Act*, R.S.O. 1970, c. 375;
- (pd) prescribing records to be kept by dealers;
- (pe) prescribing forms and providing for their use.

3. The said Act is amended by adding thereto the following ^{ss. 9a-9n,} enacted sections:

9a.—(1) No person shall commence or continue to carry ^{Licence} on business as a dealer unless he is the holder of a licence as a dealer issued by the Director.

(2) The Director shall issue a licence as a dealer to a ^{Issue of} person who makes application therefor in accordance with this Act and the regulations and pays the prescribed fee unless, after a hearing, he is of the opinion that,

(a) the applicant or, where the applicant is a corporation, its officers or directors, is or are not competent to carry on the business;

- (b) the past conduct of the applicant, or where the applicant is a corporation, of its officers or directors, affords reasonable ground for belief that the business will not be carried on in accordance with the law;
- (c) the applicant is not in a position to observe or carry out the provisions of this Act and the regulations;
- (d) where the applicant was previously the holder of a licence and,
 - (i) such licence was revoked, or
 - (ii) the applicant or, where the applicant is a corporation, any officer, servant or director thereof or any person who will be in any way associated with the applicant in connection with the business, was convicted of an offence,
 under this Act and the grounds for such cancellation or conviction warrant a refusal to issue the licence; or
- (e) the applicant is not financially responsible.

**Renewal of
licence**

(3) Subject to section 9b, the Director shall renew a licence as a dealer on application therefor by the licensee in accordance with this Act and the regulations and payment of the prescribed fee.

**Refusal to
renew or
suspension or
revocation of
licence**

9b. The Director may refuse to renew or may suspend or revoke a licence as a dealer if, after a hearing, he is of the opinion that,

- (a) the licensee has ceased to possess or have available all premises, facilities and equipment necessary to carry on the business in accordance with this Act and the regulations;
- (b) the licensee or, where the licensee is a corporation, any officer, director or servant thereof has contravened, or has permitted any person under his control or direction in connection with the business to contravene, any provision of this Act or the regulations or of any other law in force in Ontario applying to the carrying on of such business or the conditions for licensing and such contravention warrants such refusal to renew, suspension or revocation of the licence;

- (c) the licensee has failed to comply with an award of the Arbitration Board;
- (d) any other ground for refusal to renew, suspension or revocation specified in the regulations exists; or
- (e) any ground for refusing to issue a licence under subsection 2 of section 9a exists.

9c.—(1) No person shall commence or continue to engage in the operation of a controlled-atmosphere storage plant unless he is the holder of a licence as an operator of a controlled-atmosphere storage plant issued by the Director.

(2) No person shall commence or continue to engage in the packing or repacking of controlled-atmosphere fruit for sale by him unless he is the holder of a licence as a packer of controlled-atmosphere fruit issued by the Director.

(3) The holder of a licence as an operator of a controlled-atmosphere storage plant shall be deemed to be the holder of a licence as a packer of controlled-atmosphere fruit.

(4) The Director shall issue a licence as an operator of a controlled-atmosphere storage plant or as a packer of controlled-atmosphere fruit to a person who makes application therefor in accordance with this Act and the regulations and pays the prescribed fee unless, after a hearing, he is of the opinion that,

- (a) the applicant, or where the applicant is a corporation, its officers or directors, is or are not competent to carry on the business;
- (b) the past conduct of the applicant, or where the applicant is a corporation, of its officers or directors, affords reasonable ground for belief that the business will not be carried on in accordance with the law;
- (c) the applicant does not possess or will not have available all premises, facilities and equipment necessary to carry on the business in accordance with this Act and the regulations;
- (d) the applicant is not in a position to observe or carry out the provisions of this Act and the regulations;
- (e) where the applicant was previously the holder of a licence and,

(i) such licence was revoked, or

(ii) the applicant or, where the applicant is a corporation, any officer, servant or director thereof or any person who will be in any way associated with the applicant in connection with the business, was convicted of an offence,

under this Act and the grounds for such cancellation or conviction warrant a refusal to issue the licence; or

(f) the applicant is not financially responsible.

**Renewal of
licence**

(5) Subject to section 9d, the Director shall renew a licence as an operator of a controlled-atmosphere storage plant or as a packer of controlled-atmosphere fruit on application therefor by the licensee in accordance with this Act and the regulations and payment of the prescribed fee.

**Refusal to
renew or
suspension or
revocation of
licence**

9d. The Director may refuse to renew or may suspend or revoke a licence as an operator of a controlled-atmosphere storage plant or as a packer of controlled-atmosphere fruit if, after a hearing, he is of the opinion that,

(a) the licensee has ceased to possess or have available all premises, facilities and equipment necessary to carry on the business in accordance with this Act and the regulations;

(b) the licensee, or where the licensee is a corporation, any officer, director or servant thereof has contravened or has permitted any person under his control or direction in connection with the business to contravene any provision of this Act or the regulations or of any other law in force in Ontario applying to the carrying on of such business or the conditions for licensing and such contravention warrants such refusal to renew, suspension or revocation of the licence;

(c) any other ground for refusal to renew, suspension or revocation specified in the regulations exists; or

(d) any ground for refusing to issue a licence under subsection 2 of section 9c exists.

**Continuation
of licence
pending
renewal**

9e. Where, within the time prescribed therefor or, if no time is prescribed, before expiry of his licence, a licensee

has applied for a renewal of his licence and paid the prescribed fee and observed or carried out the provisions of this Act and the regulations, his existing licence shall be deemed to continue until he has received the decision of the Director on his application for renewal.

9f.—(1) The notice of a hearing by the Director under section 9a, 9b, 9c or 9d shall afford the applicant or licensee Notice of hearing a reasonable opportunity to show or achieve compliance before the hearing with all lawful requirements for the issue or retention of the licence.

(2) An applicant or licensee who is a party to proceedings in which the Director holds a hearing shall be afforded an Examination of written or documentary evidence opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

9g. Where the Director has refused to issue or renew or has suspended or revoked a licence pursuant to a hearing he may, Variation of decision by Director at any time of his own motion or on the application of the person who was the applicant or licensee, vary or rescind his decision but the Director shall not vary or rescind his decision adversely to the interests of any person without holding a rehearing to which such person is a party and may make such decision pursuant to such rehearing as he considers proper under this Act and the regulations.

9h.—(1) A board to be known as the “Produce Licence Review Board” is hereby established and shall consist of Produce Licence Review Board established not fewer than three persons appointed by the Lieutenant Governor in Council, none of whom are members of the public service in the employ of the Ministry of Agriculture and Food.

(2) The Lieutenant Governor in Council may appoint one Chairman and vice-chairman of the members of the Board as chairman and another of chairman the members as vice-chairman.

(3) A majority of the members of the Board constitutes Quorum a quorum.

(4) The members of the Board shall receive such remuneration and expenses as the Lieutenant Governor in Council may determine. Remuneration

9i.—(1) Where the Director refuses to issue or renew or suspends or revokes a licence, the applicant or licensee may, by written notice delivered to the Director and filed with the Board within thirty days after receipt of the decision of the Director, appeal to the Board. Appeal to Board

Extension
of time
for appeal

(2) The Board may extend the time for the giving of notice by an applicant or licensee under subsection 1, either before or after expiration of such time, where it is satisfied that there are *prima facie* grounds for appeal and that there are reasonable grounds for applying for the extension.

Disposal
of appeal

(3) Where an applicant or licensee appeals to the Board under this section, the Board shall hear the appeal by way of a hearing *de novo* to determine whether the licence should be issued, renewed, suspended or revoked and may after the hearing confirm or alter the decision of the Director or direct the Director to do any act he is authorized to do under this Act and the regulations and as the Board considers proper and, for such purpose, the Board may substitute its opinion for that of the Director.

Idem

(4) Notwithstanding that an applicant or licensee has appealed under this section from a decision of the Director, unless the Director otherwise directs the decision of the Director is effective until the appeal is disposed of.

Parties

9j.—(1) The Director, the appellant and such other persons as the Board may specify are parties to the proceeding before the Board under this Act.

Members
making
decision not
to have taken
part in
investiga-
tion, etc.

(2) Members of the Board assigned to render a decision after a hearing shall not have taken part prior to the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but such members may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

Recording of
evidence

(3) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Findings
of fact

(4) The findings of fact of the Board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of *The Statutory Powers Procedure Act, 1971*.

1971, c. 47

Only
members at
hearing to
participate in
decision

(5) No member of the Board shall participate in a decision of the Board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argu-

ment of the parties and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision.

9k.—(1) Any party to the hearing before the Board may appeal to court from the decision of the Board to the Supreme Court in accordance with the rules of court.

(2) The Minister is entitled to be heard, by counsel or Minister entitled to be otherwise, upon the argument of an appeal under this section.^{heard}

(3) The chairman of the Board shall certify to the Registrar Record to be filed in court of the Supreme Court the record of the proceedings before the Board which, together with a transcript of the evidence before the Board if it is not part of the Board's record, shall constitute the record in the appeal.

(4) An appeal under this section may be made on any question that is not a question of fact alone and the court Powers of court on appeal may confirm or alter the decision of the Board or direct the Director to do any act he is authorized to do under this Act or may refer the matter back to the Board for reconsideration by the Board as the court considers proper and the court may substitute its opinion for that of the Director or the Board.

(5) Notwithstanding that an applicant or licensee has appealed under this section from a decision of the Board, unless the Board otherwise directs, the decision of the Board Effect of decision of Board pending disposal of appeal is effective until the appeal is disposed of.

9l.—(1) A board to be known as the "Produce Arbitration Board" is hereby established and shall consist of three persons appointed by the Lieutenant Governor in Council. Produce Arbitration Board established

(2) One of the members of the Arbitration Board shall be the holder of a licence as a dealer, one of the members shall be a producer of farm products and none of the members shall be members of the public service. Members

(3) The Lieutenant Governor in Council may appoint one Chairman of the members of the Arbitration Board as chairman.

(4) The members of the Arbitration Board shall receive such remuneration and expenses as the Lieutenant Governor in Council may determine. Remuneration and expenses

9m.—(1) Every contract between two contracting parties shall be deemed to provide that, where the parties have submitted to arbitration failed to resolve any dispute arising out of any term or board. Matter in dispute to be Arbitration Board

R.S.O. 1970,
c. 25

Notice of
matter in
dispute

Idem

Director
to notify
members

Costs of
reference and
award

Board may
direct
payment to
Treasurer
of Ontario

Appeal from
award

Commencement

Short title

condition of the contract whether express or implied, the matter in dispute shall be submitted for arbitration by the Arbitration Board and *The Arbitrations Act* applies, except where it is inconsistent with this Act.

(2) Either contracting party may refer the matter in dispute to the Arbitration Board by serving notice thereof upon the other contracting party and the Director.

(3) A notice under subsection 2 shall contain a statement of the matter in dispute and the name and address of the contracting party serving the notice.

(4) Where the Director receives a notice under subsection 2, he shall forthwith notify the members of the Arbitration Board accordingly.

(5) All costs of the reference and award are in the discretion of the Arbitration Board which may direct to and by whom and in what manner those costs or any part thereof shall be paid or may direct that no costs shall be paid as between the contracting parties.

(6) Notwithstanding *The Arbitrations Act*, no fees are payable by the parties to the members of the Arbitration Board for their services but the Arbitration Board may include in any award a direction to pay to the Treasurer of Ontario for the services of the Arbitration Board an amount which shall not exceed the total remuneration and expenses payable to the members of the Arbitration Board under subsection 4 of section 9^l respecting the reference and award.

9n. An appeal lies from an award of the Arbitration Board and section 16 of *The Arbitrations Act* applies as if it were agreed by the terms of a submission that there may be an appeal from the award.

4. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.
5. This Act may be cited as *The Farm Products Grades and Sales Amendment Act, 1974*.

)

BILL 20

An Act to amend
The Farm Products Grades
and Sales Act

1st Reading

March 28th, 1974

2nd Reading

3rd Reading

THE HON. W. A. STEWART
Minister of Agriculture and Food

(*Government Bill*)

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BILL 20

Government Publications

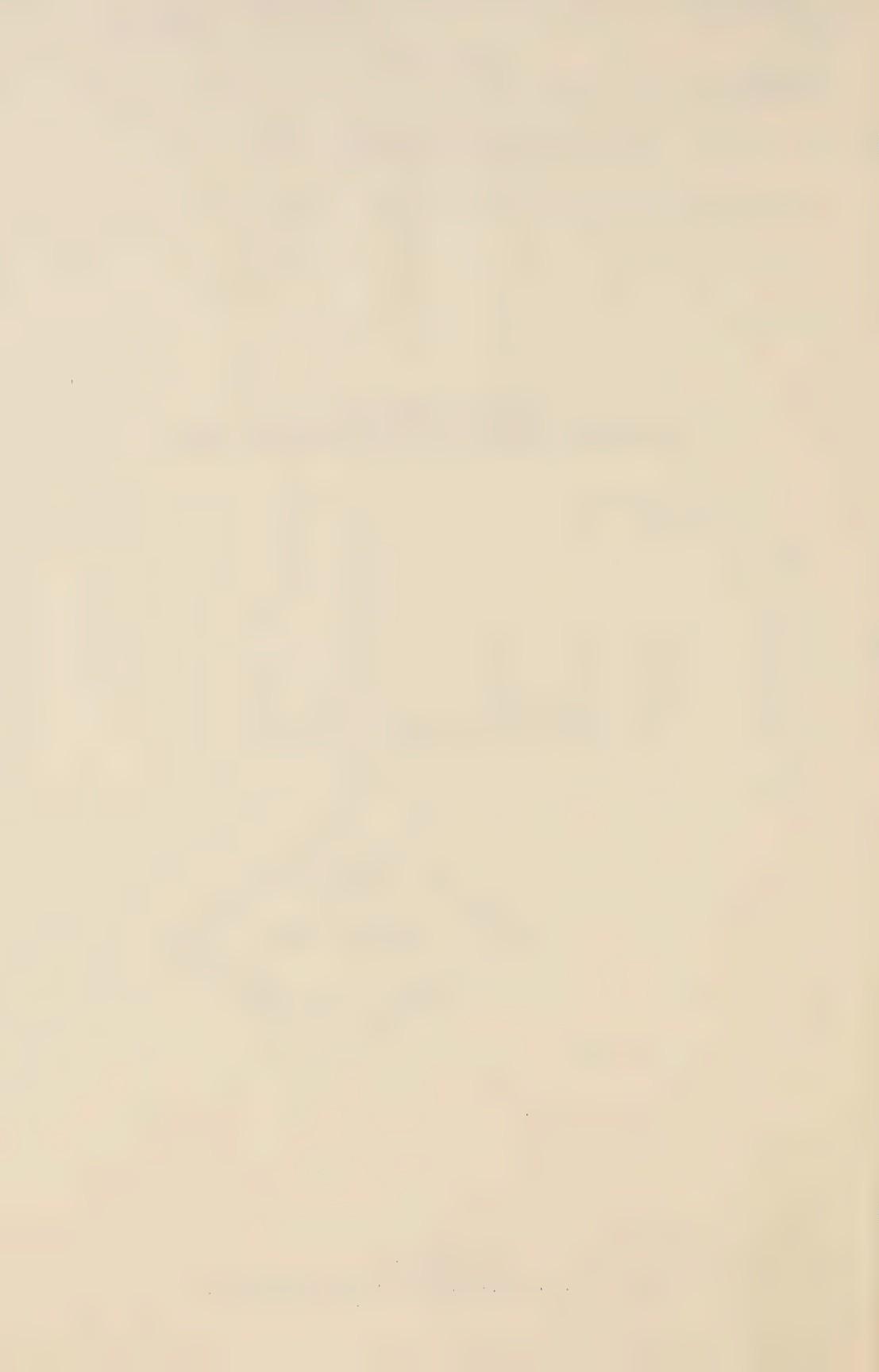
4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

An Act to amend
The Farm Products Grades and Sales Act

THE HON. W. A. STEWART
Minister of Agriculture and Food



TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO



BILL 20**1974**

**An Act to amend
The Farm Products Grades and Sales Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of *The Farm Products Grades and Sales Act*, being chapter 161 of the Revised Statutes of Ontario, 1970, as re-enacted^{s.1.} amended by the Statutes of Ontario, 1972, chapter 37, section 1, is repealed and the following substituted therefor:

1. In this Act,

Interpre-
tation

(a) “Arbitration Board” means the Produce Arbitration Board established under this Act;

(b) “Board” means the Produce Licence Review Board established under this Act;

(c) “contracting party” means,

· (i) a producer of farm products who has entered into a contract with a licensee, or

· (ii) a licensee who has entered into a contract with a producer of farm products,

respecting the marketing of any farm product;

(d) “controlled-atmosphere fruit” means fruit that has been stored in a sealed compartment of a controlled-atmosphere storage plant for a period of at least ninety days from the date of the sealing thereof where the oxygen content of the air in the sealed compartment did not exceed 5 per cent during the storage;

(e) “controlled-atmosphere storage plant” means premises and buildings constructed and equipped

for cold storage of fruit in sealed compartments within which the oxygen content of the air is mechanically controlled;

- (f) "dealer" means a person who purchases or accepts for sale a farm product from the producer thereof, other than a person who purchases a farm product for his own consumption;
- (g) "Director" means the Director of the Farm Products Inspection Branch of the Ministry of Agriculture and Food;
- (h) "farm product" means such animals, animal products, Christmas trees, fruit, fruit products, grains, honey, maple products, seeds, tobacco, vegetables, vegetable products, wood or any class thereof and articles of food or drink manufactured or derived in whole or in part from any of those products as are designated in the regulations;
- (i) "grade" means, except in subsection 4 of section 2, a grade established under this Act;
- (j) "grader" means a grader appointed under this Act;
- (k) "inspector" means an inspector appointed under this Act;
- (l) "licence" means a licence issued under this Act and "licensee" has a corresponding meaning;
- (m) "marker" means a marker issued under this Act;
- (n) "Minister" means the Minister of Agriculture and Food;
- (o) "motor vehicle" means a motor vehicle as defined in *The Highway Traffic Act*;
- (p) "package" includes any box, crate or other receptacle used for or suitable for use in the marketing, transporting or shipping of a farm product;
- (q) "regulations" means the regulations made under this Act.

2. Clauses *m*, *n*, *o* and *p* of subsection 1 of section 2 of the said Act are repealed and the following substituted therefor:

- (m) providing for the manner of issuing licences and prescribing their duration and the fees payable therefor;
- (n) prescribing the terms and conditions on which licences are issued;
- (o) prescribing grounds for refusal to renew, suspension or revocation of licences in addition to the grounds mentioned in section 9b or 9d;
- (p) providing for the issuing of markers for motor vehicles owned or leased by persons licensed as dealers and prescribing the fees payable therefor;
- (pa) prohibiting any person licensed as a dealer from transporting any farm product in a motor vehicle upon a highway in Ontario unless a marker has been issued respecting the vehicle and requiring any markers to be displayed in such manner as may be prescribed;
- (pb) requiring removal of any marker issued to a person whose licence as a dealer has been suspended or revoked;
- (pc) prescribing the form of and conditions in the bill of lading to be used in transporting or shipping a farm product in respect of which a bill of lading is not required under *The Public Commercial Vehicles Act* R.S.O. 1970, c. 375;
- (pd) prescribing records to be kept by dealers;
- (pe) prescribing forms and providing for their use.

3. The said Act is amended by adding thereto the following ss. 9a-9n.
enacted

9a.—(1) No person shall commence or continue to carry Licence on business as a dealer unless he is the holder of a licence as a dealer issued by the Director.

(2) The Director shall issue a licence as a dealer to a Issue of
licence person who makes application therefor in accordance with this Act and the regulations and pays the prescribed fee unless, after a hearing, he is of the opinion that,

- (a) the applicant or, where the applicant is a corporation, its officers or directors, is or are not competent to carry on the business;

- (b) the past conduct of the applicant, or where the applicant is a corporation, of its officers or directors, affords reasonable ground for belief that the business will not be carried on in accordance with the law;
- (c) the applicant is not in a position to observe or carry out the provisions of this Act and the regulations;
- (d) where the applicant was previously the holder of a licence and,
 - (i) such licence was revoked, or
 - (ii) the applicant or, where the applicant is a corporation, any officer, servant or director thereof or any person who will be in any way associated with the applicant in connection with the business, was convicted of an offence,
- under this Act and the grounds for such cancellation or conviction warrant a refusal to issue the licence; or
- (e) the applicant is not financially responsible.

**Renewal of
licence**

(3) Subject to section 9b, the Director shall renew a licence as a dealer on application therefor by the licensee in accordance with this Act and the regulations and payment of the prescribed fee.

**Refusal to
renew or
suspension or
revocation of
licence**

9b. The Director may refuse to renew or may suspend or revoke a licence as a dealer if, after a hearing, he is of the opinion that,

- (a) the licensee has ceased to possess or have available all premises, facilities and equipment necessary to carry on the business in accordance with this Act and the regulations;
- (b) the licensee or, where the licensee is a corporation, any officer, director or servant thereof has contravened, or has permitted any person under his control or direction in connection with the business to contravene, any provision of this Act or the regulations or of any other law in force in Ontario applying to the carrying on of such business or the conditions for licensing and such contravention warrants such refusal to renew, suspension or revocation of the licence;

- (c) the licensee has failed to comply with an award of the Arbitration Board;
- (d) any other ground for refusal to renew, suspension or revocation specified in the regulations exists; or
- (e) any ground for refusing to issue a licence under subsection 2 of section 9a exists.

9c.—(1) No person shall commence or continue to engage in the operation of a controlled-atmosphere storage plant unless he is the holder of a licence as an operator of a controlled-atmosphere storage plant issued by the Director.

(2) No person shall commence or continue to engage in the packing or repacking of controlled-atmosphere fruit for sale by him unless he is the holder of a licence as a packer of controlled-atmosphere fruit issued by the Director.

(3) The holder of a licence as an operator of a controlled-atmosphere storage plant shall be deemed to be the holder of a licence as a packer of controlled-atmosphere fruit.

(4) The Director shall issue a licence as an operator of a controlled-atmosphere storage plant or as a packer of controlled-atmosphere fruit to a person who makes application therefor in accordance with this Act and the regulations and pays the prescribed fee unless, after a hearing, he is of the opinion that,

- (a) the applicant, or where the applicant is a corporation, its officers or directors, is or are not competent to carry on the business;
- (b) the past conduct of the applicant, or where the applicant is a corporation, of its officers or directors, affords reasonable ground for belief that the business will not be carried on in accordance with the law;
- (c) the applicant does not possess or will not have available all premises, facilities and equipment necessary to carry on the business in accordance with this Act and the regulations;
- (d) the applicant is not in a position to observe or carry out the provisions of this Act and the regulations;
- (e) where the applicant was previously the holder of a licence and,

- (i) such licence was revoked, or
- (ii) the applicant or, where the applicant is a corporation, any officer, servant or director thereof or any person who will be in any way associated with the applicant in connection with the business, was convicted of an offence,

under this Act and the grounds for such cancellation or conviction warrant a refusal to issue the licence; or

- (f) the applicant is not financially responsible.

Renewal of licence

(5) Subject to section 9d, the Director shall renew a licence as an operator of a controlled-atmosphere storage plant or as a packer of controlled-atmosphere fruit on application therefor by the licensee in accordance with this Act and the regulations and payment of the prescribed fee.

Refusal to renew or suspension or revocation of licence

9d. The Director may refuse to renew or may suspend or revoke a licence as an operator of a controlled-atmosphere storage plant or as a packer of controlled-atmosphere fruit if, after a hearing, he is of the opinion that,

- (a) the licensee has ceased to possess or have available all premises, facilities and equipment necessary to carry on the business in accordance with this Act and the regulations;
- (b) the licensee, or where the licensee is a corporation, any officer, director or servant thereof has contravened or has permitted any person under his control or direction in connection with the business to contravene any provision of this Act or the regulations or of any other law in force in Ontario applying to the carrying on of such business or the conditions for licensing and such contravention warrants such refusal to renew, suspension or revocation of the licence;
- (c) any other ground for refusal to renew, suspension or revocation specified in the regulations exists; or
- (d) any ground for refusing to issue a licence under subsection 2 of section 9c exists.

Continuation of licence pending renewal

9e. Where, within the time prescribed therefor or, if no time is prescribed, before expiry of his licence, a licensee

has applied for a renewal of his licence and paid the prescribed fee and observed or carried out the provisions of this Act and the regulations, his existing licence shall be deemed to continue until he has received the decision of the Director on his application for renewal.

9f.—(1) The notice of a hearing by the Director under ^{Notice of hearing} section 9a, 9b, 9c or 9d shall afford the applicant or licensee a reasonable opportunity to show or achieve compliance before the hearing with all lawful requirements for the issue or retention of the licence.

(2) An applicant or licensee who is a party to proceedings in which the Director holds a hearing shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing. ^{Examination of written or documentary evidence}

9g. Where the Director has refused to issue or renew or has suspended or revoked a licence pursuant to a hearing he may, at any time of his own motion or on the application of the person who was the applicant or licensee, vary or rescind his decision but the Director shall not vary or rescind his decision adversely to the interests of any person without holding a rehearing to which such person is a party and may make such decision pursuant to such rehearing as he considers proper under this Act and the regulations. ^{Variation of decision by Director}

9h.—(1) A board to be known as the “Produce Licence Review Board” is hereby established and shall consist of not fewer than three persons appointed by the Lieutenant Governor in Council, none of whom are members of the public service in the employ of the Ministry of Agriculture and Food. ^{Produce Licence Review Board established}

(2) The Lieutenant Governor in Council may appoint one ^{Chairman and vice-chairman} of the members of the Board as chairman and another of the members as vice-chairman.

(3) A majority of the members of the Board constitutes ^{Quorum} a quorum.

(4) The members of the Board shall receive such remuneration and expenses as the Lieutenant Governor in Council may determine. ^{Remuneration}

9i.—(1) Where the Director refuses to issue or renew or suspends or revokes a licence, the applicant or licensee may, by written notice delivered to the Director and filed with the Board within thirty days after receipt of the decision of the Director, appeal to the Board. ^{Appeal to Board}

Extension
of time
for appeal

(2) The Board may extend the time for the giving of notice by an applicant or licensee under subsection 1, either before or after expiration of such time, where it is satisfied that there are *prima facie* grounds for appeal and that there are reasonable grounds for applying for the extension.

Disposal
of appeal

(3) Where an applicant or licensee appeals to the Board under this section, the Board shall hear the appeal by way of a hearing *de novo* to determine whether the licence should be issued, renewed, suspended or revoked and may after the hearing confirm or alter the decision of the Director or direct the Director to do any act he is authorized to do under this Act and the regulations and as the Board considers proper and, for such purpose, the Board may substitute its opinion for that of the Director.

Idem

(4) Notwithstanding that an applicant or licensee has appealed under this section from a decision of the Director, unless the Director otherwise directs the decision of the Director is effective until the appeal is disposed of.

Parties

9j.—(1) The Director, the appellant and such other persons as the Board may specify are parties to the proceeding before the Board under this Act.

Members
making
decision not
to have taken
part in
investiga-
tion, etc.

(2) Members of the Board assigned to render a decision after a hearing shall not have taken part prior to the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but such members may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

Recording of
evidence

(3) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Findings
of fact

1971, c. 47

Only
members at
hearing to
participate in
decision

(4) The findings of fact of the Board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of *The Statutory Powers Procedure Act, 1971*.

(5) No member of the Board shall participate in a decision of the Board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argu-

ment of the parties and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision.

9k.—(1) Any party to the hearing before the Board may ^{Appeal to court} appeal from the decision of the Board to the Supreme Court in accordance with the rules of court.

(2) The Minister is entitled to be heard, by counsel or ^{Minister entitled to be heard} otherwise, upon the argument of an appeal under this section.

(3) The chairman of the Board shall certify to the Registrar ^{Record to be filed in court} of the Supreme Court the record of the proceedings before the Board which, together with a transcript of the evidence before the Board if it is not part of the Board's record, shall constitute the record in the appeal.

(4) An appeal under this section may be made on any ^{Powers of court on appeal} question that is not a question of fact alone and the court may confirm or alter the decision of the Board or direct the Director to do any act he is authorized to do under this Act or may refer the matter back to the Board for reconsideration by the Board as the court considers proper and the court may substitute its opinion for that of the Director or the Board.

(5) Notwithstanding that an applicant or licensee has appealed under this section from a decision of the Board, ^{Effect of decision of Board pending disposal of appeal} unless the Board otherwise directs, the decision of the Board is effective until the appeal is disposed of.

9l.—(1) A board to be known as the "Produce Arbitration Board" is hereby established and shall consist of three ^{Produce Arbitration Board established} persons appointed by the Lieutenant Governor in Council.

(2) One of the members of the Arbitration Board shall be ^{Members} the holder of a licence as a dealer, one of the members shall be a producer of farm products and none of the members shall be members of the public service.

(3) The Lieutenant Governor in Council may appoint one ^{Chairman} of the members of the Arbitration Board as chairman.

(4) The members of the Arbitration Board shall receive ^{Remuneration and expenses} such remuneration and expenses as the Lieutenant Governor in Council may determine.

9m.—(1) Every contract between two contracting parties ^{Matter in dispute to be submitted to Arbitration Board} shall be deemed to provide that, where the parties have failed to resolve any dispute arising out of any term or

R.S.O. 1970.
c. 25

condition of the contract whether express or implied, the matter in dispute shall be submitted for arbitration by the Arbitration Board and *The Arbitrations Act* applies, except where it is inconsistent with this Act.

Notice of
matter in
dispute

(2) Either contracting party may refer the matter in dispute to the Arbitration Board by serving notice thereof upon the other contracting party and the Director.

Idem

(3) A notice under subsection 2 shall contain a statement of the matter in dispute and the name and address of the contracting party serving the notice.

Director
to notify
members

(4) Where the Director receives a notice under subsection 2, he shall forthwith notify the members of the Arbitration Board accordingly.

Costs of
reference and
award

(5) All costs of the reference and award are in the discretion of the Arbitration Board which may direct to and by whom and in what manner those costs or any part thereof shall be paid or may direct that no costs shall be paid as between the contracting parties.

Board may
direct
payment to
Treasurer
of Ontario

(6) Notwithstanding *The Arbitrations Act*, no fees are payable by the parties to the members of the Arbitration Board for their services but the Arbitration Board may include in any award a direction to pay to the Treasurer of Ontario for the services of the Arbitration Board an amount which shall not exceed the total remuneration and expenses payable to the members of the Arbitration Board under subsection 4 of section 9^l respecting the reference and award.

Appeal from
award

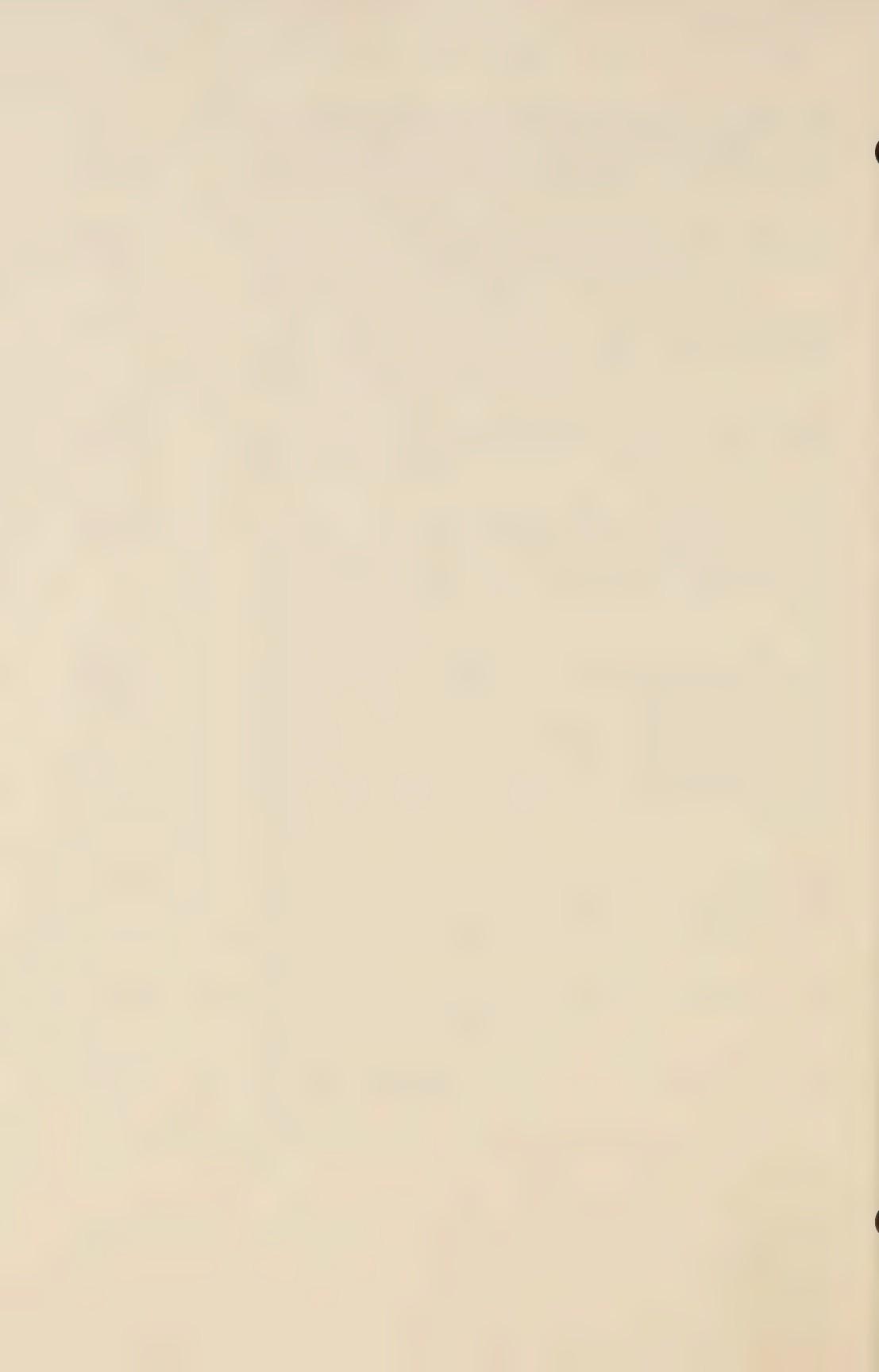
9n. An appeal lies from an award of the Arbitration Board and section 16 of *The Arbitrations Act* applies as if it were agreed by the terms of a submission that there may be an appeal from the award.

Commencement

4. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

5. This Act may be cited as *The Farm Products Grades and Sales Amendment Act, 1974*.



BILL 20

An Act to amend
The Farm Products Grades
and Sales Act

1st Reading

March 28th, 1974

2nd Reading

April 9th, 1974

3rd Reading

April 9th, 1974

THE HON. W. A. STEWART
Minister of Agriculture and Food

CAZON

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BILL 21

Government Bill

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

Legislative Assembly

An Act to amend The Agricultural Societies Act

THE HON. W. A. STEWART
Minister of Agriculture and Food



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTES

SECTION 1.—Subsections 1 and 2. These subsections amend the appropriate clauses in the definition section to reflect the change in name of the Ministry.

Subsection 3. The present clause *f* of section 1 of the Act defines "Superintendent" as the Superintendent of Agricultural Societies and there is no provision in the Act for appointing a Superintendent. This subsection amends clause *f* to provide that the Director of the Agricultural and Horticultural Societies Branch of the Ministry is the Superintendent.

SECTION 2.—Subsection 1. At present, the organizing members of a society must reside within ten miles of the headquarters of the proposed society. This subsection amends paragraph 1 of section 4 of the Act to increase the distance to twenty-five miles.

Subsection 2. At present, organizing members are required to pay \$1 to the organizer for the initial funds of the society. This subsection amends paragraph 3 of section 4 of the Act to increase the amount to \$2 per person.

BILL 21

1974

**An Act to amend
The Agricultural Societies Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Clause *b* of section 1 of *The Agricultural Societies Act*, being chapter 15 of the Revised Statutes of Ontario, 1970, is repealed.
 (2) The said section 1 is amended by adding thereto the following clause:
 (da) “Ministry” means the Ministry of Agriculture and Food.
 (3) Clause *f* of the said section 1 is repealed and the following substituted therefor:
 (f) “Superintendent” means the Director of the Agricultural and Horticultural Societies Branch of the Ministry.
2. Paragraphs 1, 3, 6 and 10 of section 4 of the said Act are repealed and the following substituted therefor:
 1. A declaration in the form prescribed by the Minister shall be signed by the persons who desire to organize a society, but such persons must be of the age of eighteen years or over and must reside within twenty-five miles of the place designated in the declaration as the headquarters of such society.
 3. Every person who signs the declaration shall pay fees payable to the person having charge thereof the sum of signatories not less than \$2 at the time of signing the

declaration and all such sums of money become the property of the society upon its organization, but, where no society is organized, such sums shall be repaid to the persons entitled thereto.

quorum

6. At the organization meeting, and at every annual and special meeting of a society, fifteen members shall form a quorum but, in a provisional judicial district or provisional county, ten members shall form a quorum.

transmission
of report of
organization
meeting

10. A report of the organization meeting certified by the president, the secretary and the organizer, containing a statement of the members and a list of the officers elected and appointed, shall be sent to the Superintendent within one month after the holding of the meeting.

s. 6 (3),
re-enacted

3. Subsection 3 of section 6 of the said Act is repealed and the following substituted therefor:

Membership
fee

- (3) In every society there shall be an annual membership fee of not less than \$2.

s. 8 (1)(e),
re-enacted

4. Clause *e* of subsection 1 of section 8 of the said Act is repealed and the following substituted therefor:

- (*e*) encouraging and promoting reforestation, rural beautification and exterior farm and homestead improvements.

s. 11 (1),
re-enacted

- 5.—(1) Subsection 1 of section 11 of the said Act is repealed and the following substituted therefor:

Statement to
be sent to
Super-
intendent

- (1) A statement of officers and members and a copy of the report and financial statement in the form prescribed by the Minister and certified by the president, secretary and treasurer, or secretary-treasurer, and auditors to be true copies shall be forwarded to the Superintendent within ninety days after the holding of the annual meeting.

s. 11 (3),
re-enacted

- (2) Subsection 3 of the said section 11 is repealed and the following substituted therefor:

Statement
as to com-
petitions, etc.

- (3) Where a society exhibits a display of a farm product that is produced on a commercial basis or holds a field-crop or other competition or sponsors an amateur

Subsection 3. At present, the quorum for meetings is fifteen members. This subsection amends paragraph 6 of section 4 of the Act to lower the quorum to ten members in the case of societies in provisional judicial districts and provisional counties.

Subsection 4. At present, the report of the organization meeting must be sent to the Superintendent within one week of the meeting. This subsection amends paragraph 10 of section 4 of the Act to extend the time limit to one month.

SECTION 3. This section increases the mandatory minimum membership fee for societies from \$1 to \$2.

SECTION 4. This section amends clause *e* of section 8 of the Act to include the encouraging and promoting of exterior farm and homestead improvements among the defined objects of a society.

SECTION 5.—Subsection 1. This subsection amends subsection 1 of section 11 of the Act respecting the report to the Superintendent regarding a society's annual meeting. At present, the time limit for submitting this report is one month. The amendment increases the time limit to ninety days.

Subsection 2. This subsection amends subsection 3 of section 11 of the Act respecting reports to the Superintendent regarding displays and competitions, expenditures and prizes for the same, etc., and is complementary to section 8 of the Bill.

SECTION 6. This section amends subsection 7 of section 16 of the Act relating to remuneration and expenses. The present subsection prohibits officers of the society from receiving remuneration. The new provision prohibits officers, directors and members from receiving remuneration for carrying out their duties as officer, director or member. In both the present subsection and the new subsection, the secretary, treasurer, secretary-treasurer and manager are specific exceptions to this rule. Also, under the present subsection, only officers may be paid for travelling and living expenses while engaged in society business. The new subsection permits payment of expenses to any officer, director or member while so engaged.

SECTION 7. Complementary to section 10 of the Bill.

SECTION 8. This section amends paragraphs 2 and 3 of subsection 1 of section 24 of the Act relating to grants. In paragraph 2, subparagraphs i, ii and iii provide for grants respecting matters not provided for in the present paragraph. In paragraph 3, subparagraph ii is new and prohibits payment of an annual grant in respect of matters for which a specific grant is payable.

program, using local talent to provide entertainment, and such display, competition, or amateur program is approved by the Superintendent, the officers of the society shall within ninety days thereafter forward to the Superintendent on a form supplied by the Ministry a statement showing the particulars of the display, competition or amateur program including, where applicable, the number of entries and the expenditures, including prizes awarded, in connection therewith.

- 6.** Subsection 7 of section 16 of the said Act is repealed^{s. 16 (7), re-enacted} and the following substituted therefor:

(7) No officer, director or member of a society, except the secretary, treasurer, secretary-treasurer or manager, shall receive any remuneration for carrying out his duties as officer, director or member, but travelling and living expenses may be allowed to any officer, director or member while engaged in duties on behalf of the society, and the board may fix such remuneration and travelling and living expenses, which shall be payable out of the funds of the society.

- 7.** Subsection 2 of section 19 of the said Act is repealed and^{s. 19 (2), re-enacted} the following substituted therefor:

(2) The officers of a society may by their rules and regulations prohibit and prevent theatrical, circus or acrobatic performances, exhibitions or shows and may also regulate or prevent the huckstering or trafficking in fruit, goods, wares or merchandise on the exhibition grounds or within three hundred yards thereof on the day of an exhibition, and any person who, after notice of such rules and regulations, contravenes any provisions thereof is liable to be removed by an officer of the society, a person appointed under subsection 1 of section 30, or a police officer, and is liable to the penalties provided in this Act.

- 8.** Paragraphs 2 and 3 of subsection 1 of section 24 of the said Act are repealed and the following substituted therefor:^{s. 24 (1), pars. 2, 3, re-enacted}

2. Where a society complies with subsection 3 of section 11, and its statement is satisfactory to the Superintendent, it shall receive a grant,

i. where it has sponsored a farm or homestead improvement competition, equal to one-half of the sum expended by the society as shown by the statement of its expenditures for the competition, but in no case shall the grant be more than \$300,

- ii. where it has sponsored a special event with light horses, equal to one-third of the sum expended by the society as shown by the statement of its expenditures for the event, but in no case shall the grant be more than \$500,
 - iii. where it has sponsored an amateur program, using local talent to provide entertainment, equal to one-third of the sum expended by the society as shown by the statement of its expenditures for the amateur program, but in no case shall the grant be more than \$500, and
 - iv. where it has sponsored a display or competition not referred to in sub-paragraph i, ii or iii, equal to one-half of the sum expended by the society as shown by the statement of its expenditures for the display or competition, but in no case shall the grant be more than \$200 for a display or more than \$75 for a competition.
3. Where a society complies with subsections 1 and 2 of section 11 and its statement is satisfactory to the Superintendent, it shall receive a grant equal to one-third of the average amount expended by the society during the three preceding years for agricultural purposes, as shown by the statements forwarded to the Superintendent, but,
- i. societies in a provisional judicial district or provisional county shall receive their grants on the basis of double the amount of other societies,
 - ii. no grant shall be paid under this paragraph respecting an expenditure qualifying for a grant under paragraph 2, and
 - iii. no society shall in any year receive a grant in excess of \$1,500.
- 9.** Subsection 1 of section 27 of the said Act is repealed and the following substituted therefor:

s. 27 (1),
re-enacted

Grants
from
municipal
councils

(1) Any municipal council may grant or loan money or grant land in aid of any agricultural society formed within the limits of the municipality, or partly within

SECTION 9. This section amends subsection 1 of section 27 of the Act relating to grants, loans, etc., by municipalities to societies. The present subsection imposes limits of \$5,000, \$2,000 and \$1,000 in the case of cities, towns and villages respectively. These limits are removed.

SECTION 10. At present, section 30 of the Act provides for the appointment of constables by a justice of the peace on the request of a society. The amendment provides for the appointment by a society of persons to carry out the duties prescribed.

SECTION 11. The application of section 33 of the Act is enlarged and the maximum fine is increased from \$50 to \$100.

the limits of such municipality and partly within the limits of other municipalities, or wholly within the limits of an adjoining municipality, when such society has made the returns required by this Act.

- 10.** Section 30 of the said Act is repealed and the following<sup>s. 30,
re-enacted</sup> substituted therefor:

30.—(1) The board of directors of any society holding ^{Appoint-}ments a fair or exhibition may appoint for the duration of the fair or exhibition as many persons as may be required to carry out the duties referred to in subsection 2.

(2) Every person appointed under subsection 1 shall be <sup>Duties of
persons
appointed</sup> paid by the society and it is his duty to protect the property of the society within the exhibition grounds and to eject all persons who may be improperly within the grounds or behave in a disorderly manner or violate any of the rules or regulations of the society.

(3) No person shall wilfully hinder or obstruct an officer <sup>Obstruction
of officer,
etc.</sup> or servant of the society or a person appointed under etc. subsection 1 in the execution of his duties.

- 11.** Section 33 of the said Act is repealed and the following<sup>s. 33,
re-enacted</sup> substituted therefor:

33. Every person who contravenes any of the provisions ^{Offence} of this Act or the regulations or any rule or regulation of a society under subsection 2 of section 19 or who gains admission to the grounds contrary to the rules of the society is guilty of an offence, and on summary conviction is liable to a fine of not more than \$100.

- 12.** This Act comes into force on the day it receives Royal <sup>Commencement
Assent.</sup>

- 13.** This Act may be cited as *The Agricultural Societies Amendment Act, 1974.* ^{Short title}

An Act to amend
The Agricultural Societies Act

1st Reading

March 28th, 1974

2nd Reading

3rd Reading

THE HON. W. A. STEWART
Minister of Agriculture and Food

(*Government Bill*)

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

An Act to amend The Agricultural Societies Act

THE HON. W. A. STEWART
Minister of Agriculture and Food



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

BILL 21**1974**

**An Act to amend
The Agricultural Societies Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Clause *b* of section 1 of *The Agricultural Societies Act*, being chapter 15 of the Revised Statutes of Ontario, 1970, is repealed.
 (2) The said section 1 is amended by adding thereto the following clause:
 (da) “Ministry” means the Ministry of Agriculture and Food.
 (3) Clause *f* of the said section 1 is repealed and the following substituted therefor:
 (f) “Superintendent” means the Director of the Agricultural and Horticultural Societies Branch of the Ministry.
2. Paragraphs 1, 3, 6 and 10 of section 4 of the said Act are repealed and the following substituted therefor:
 1. A declaration in the form prescribed by the Minister shall be signed by the persons who desire to organize a society, but such persons must be of the age of eighteen years or over and must reside within twenty-five miles of the place designated in the declaration as the headquarters of such society.
 . . .
 3. Every person who signs the declaration shall pay to the person having charge thereof the sum of not less than \$2 at the time of signing the fees payable by signatories

declaration and all such sums of money become the property of the society upon its organization, but, where no society is organized, such sums shall be repaid to the persons entitled thereto.

quorum

6. At the organization meeting, and at every annual and special meeting of a society, fifteen members shall form a quorum but, in a provisional judicial district or provisional county, ten members shall form a quorum.

transmission
of report of
organization
meeting

10. A report of the organization meeting certified by the president, the secretary and the organizer, containing a statement of the members and a list of the officers elected and appointed, shall be sent to the Superintendent within one month after the holding of the meeting.

s. 6 (3),
re-enacted

3. Subsection 3 of section 6 of the said Act is repealed and the following substituted therefor:

Membership
fee

- (3) In every society there shall be an annual membership fee of not less than \$2.

s. 8 (1)(e),
re-enacted

4. Clause e of subsection 1 of section 8 of the said Act is repealed and the following substituted therefor:

- (e) encouraging and promoting reforestation, rural beautification and exterior farm and homestead improvements.

s. 11 (1),
re-enacted

- 5.—(1) Subsection 1 of section 11 of the said Act is repealed and the following substituted therefor:

Statement to
be sent to
Super-
intendent

- (1) A statement of officers and members and a copy of the report and financial statement in the form prescribed by the Minister and certified by the president, secretary and treasurer, or secretary-treasurer, and auditors to be true copies shall be forwarded to the Superintendent within ninety days after the holding of the annual meeting.

s. 11 (3),
re-enacted

- (2) Subsection 3 of the said section 11 is repealed and the following substituted therefor:

Statement
as to com-
petitions, etc.

- (3) Where a society exhibits a display of a farm product that is produced on a commercial basis or holds a field-crop or other competition or sponsors an amateur

program, using local talent to provide entertainment, and such display, competition, or amateur program is approved by the Superintendent, the officers of the society shall within ninety days thereafter forward to the Superintendent on a form supplied by the Ministry a statement showing the particulars of the display, competition or amateur program including, where applicable, the number of entries and the expenditures, including prizes awarded, in connection therewith.

- 6.** Subsection 7 of section 16 of the said Act is repealed^{s. 16 (7), re-enacted} and the following substituted therefor:

(7) No officer, director or member of a society, except the secretary, treasurer, secretary-treasurer or manager, shall receive any remuneration for carrying out his duties as officer, director or member, but travelling and living expenses may be allowed to any officer, director or member while engaged in duties on behalf of the society, and the board may fix such remuneration and travelling and living expenses, which shall be payable out of the funds of the society.

- 7.** Subsection 2 of section 19 of the said Act is repealed^{s. 19 (2), re-enacted} and the following substituted therefor:

(2) The officers of a society may by their rules and regulations prohibit and prevent theatrical, circus or acrobatic performances, exhibitions or shows and may also regulate or prevent the huckstering or trafficking in fruit, goods, wares or merchandise on the exhibition grounds or within three hundred yards thereof on the day of an exhibition, and any person who, after notice of such rules and regulations, contravenes any provisions thereof is liable to be removed by an officer of the society, a person appointed under subsection 1 of section 30, or a police officer, and is liable to the penalties provided in this Act.

- 8.** Paragraphs 2 and 3 of subsection 1 of section 24 of the said Act are repealed^{s. 24 (1), pars. 2, 3, re-enacted} and the following substituted therefor:

2. Where a society complies with subsection 3 of section 11, and its statement is satisfactory to the Superintendent, it shall receive a grant,

i. where it has sponsored a farm or homestead improvement competition, equal to one-half of the sum expended by the society as shown by the statement of its expenditures for the competition, but in no case shall the grant be more than \$300,

- ii. where it has sponsored a special event with light horses, equal to one-third of the sum expended by the society as shown by the statement of its expenditures for the event, but in no case shall the grant be more than \$500,
 - iii. where it has sponsored an amateur program, using local talent to provide entertainment, equal to one-third of the sum expended by the society as shown by the statement of its expenditures for the amateur program, but in no case shall the grant be more than \$500, and
 - iv. where it has sponsored a display or competition not referred to in sub-paragraph i, ii or iii, equal to one-half of the sum expended by the society as shown by the statement of its expenditures for the display or competition, but in no case shall the grant be more than \$200 for a display or more than \$75 for a competition.
3. Where a society complies with subsections 1 and 2 of section 11 and its statement is satisfactory to the Superintendent, it shall receive a grant equal to one-third of the average amount expended by the society during the three preceding years for agricultural purposes, as shown by the statements forwarded to the Superintendent, but,
- i. societies in a provisional judicial district or provisional county shall receive their grants on the basis of double the amount of other societies,
 - ii. no grant shall be paid under this paragraph respecting an expenditure qualifying for a grant under paragraph 2, and
 - iii. no society shall in any year receive a grant in excess of \$1,500.

s. 27 (1).
re-enacted

9. Subsection 1 of section 27 of the said Act is repealed and the following substituted therefor:

(1) Any municipal council may grant or loan money or grant land in aid of any agricultural society formed within the limits of the municipality, or partly within

Grants
from
municipal
councils

the limits of such municipality and partly within the limits of other municipalities, or wholly within the limits of an adjoining municipality, when such society has made the returns required by this Act.

- 10.** Section 30 of the said Act is repealed and the following<sup>s. 30,
re-enacted</sup> substituted therefor:

30.—(1) The board of directors of any society holding<sup>Appoint-
ments</sup> a fair or exhibition may appoint for the duration of the fair or exhibition as many persons as may be required to carry out the duties referred to in subsection 2.

(2) Every person appointed under subsection 1 shall be<sup>Duties of
persons</sup> paid by the society and it is his duty to protect the property of the society within the exhibition grounds and to eject all persons who may be improperly within the grounds or behave in a disorderly manner or violate any of the rules or regulations of the society.

(3) No person shall wilfully hinder or obstruct an officer<sup>Obstruction
of officer,
etc.</sup> or servant of the society or a person appointed under etc. subsection 1 in the execution of his duties.

- 11.** Section 33 of the said Act is repealed and the following<sup>s. 33,
re-enacted</sup> substituted therefor:

33. Every person who contravenes any of the provisions^{Offence} of this Act or the regulations or any rule or regulation of a society under subsection 2 of section 19 or who gains admission to the grounds contrary to the rules of the society is guilty of an offence, and on summary conviction is liable to a fine of not more than \$100.

- 12.** This Act comes into force on the day it receives Royal<sup>Commencement
Assent.</sup>

- 13.** This Act may be cited as *The Agricultural Societies Amend-
ment Act, 1974.*^{Short title}

An Act to amend
The Agricultural Societies Act

1st Reading

March 28th, 1974

2nd Reading

April 9th, 1974

3rd Reading

June 25th, 1974

THE HON. W. A. STEWART
Minister of Agriculture and Food

CAZON Assembly

Publications

XB

-B 56

BILL 22

Government Bill

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 Elizabeth II, 1974

The Health Disciplines Act, 1974

THE HON. F. S. MILLER
Minister of Health



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The Bill re-enacts the legislation governing five major health professions:

1. Dentistry.
2. Medicine.
3. Nursing.
4. Optometry.
5. Pharmacy.

The Bill incorporates recommendations of the Committee on the Healing Arts and of the Royal Commission Inquiry into Civil Rights, Vol. 3, Section 4.

The principal changes are:

1. lay representation on the professional governing council;
2. closer supervisory powers in the Minister;
3. the creation of a health disciplines board for the purpose of conducting hearings and review respecting complaints and applications for licensing;
4. a complete system of hearings and review for all matters of licensing and discipline with uniformity of procedures for all professions.

TABLE OF CONTENTS

	SEC.	PAGE
PART I — General.....	1—19	1
PART II — Dentistry.....	20—44	10
PART III — Medicine.....	45—68	28
PART IV — Nursing.....	69—90	47
PART V — Optometry.....	91—115	61
PART VI — Pharmacy.....	116—168	79

BILL 22**1974****The Health Disciplines Act, 1974**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I**GENERAL****1.—(1) In this Act,****Interpre-
tation**

- (a) “Board” means the Health Disciplines Board established under section 6;
- (b) “health discipline” means a health discipline to which a Part of this Act applies;
- (c) “Minister” means the Minister of Health;
- (d) “regulations” means the regulations made under this Act.

(2) In this Part,**Idem**

- (a) “College” means the corporate body of a health discipline or group of health disciplines as established for that discipline or group in a Part of this Act;
- (b) “complaints committee” means the complaints committee of a health discipline or group of health disciplines as established for that discipline or group in a Part of this Act;
- (c) “Council” means the governing body of a health discipline or group of health disciplines as established for that discipline or group in a Part of this Act;

(d) "discipline committee" means the discipline committee of a health discipline or group of health disciplines as established for that discipline or group in a Part of this Act;

(e) "registration" means,

(i) a licence to practise a health discipline or group of health disciplines issued under a Part of this Act requiring a licence to practise, or

(ii) a certificate respecting the practising of a health discipline or group of health disciplines issued under a Part of this Act,

the issuance of which is required to be entered on the register of the appropriate College, and "registered" has a corresponding meaning.

References
to hearings
1971, c. 47

(3) Nothing in this Act shall be construed to require a hearing to be held within the meaning of *The Statutory Powers Procedure Act, 1971* unless the holding of a hearing is specifically referred to.

Administration
of Act

2. The Minister is responsible for the administration of this Act.

Duties of
Minister

3.—(1) It is the duty of the Minister to ensure that the activities of health disciplines are effectively regulated and co-ordinated in the public interest, to have appropriate standards of practice developed and ensure that these are maintained and to ensure that the rights of individuals to the services provided by health disciplines of their choice are maintained and to these ends to,

(a) inquire into or direct the appropriate Council or Councils to inquire into the state of the practice of one or more health disciplines in any locality or institution;

(b) require Councils to provide such reports and information as the Minister requires for his purposes including information from the registers of the Colleges;

(c) review proposals by a Council for changes in legislation or regulations of concern to that Council;

- (d) consider the by-laws of Councils and provide advice and guidance to Councils with respect to the proposed implementation or revision of such by-laws;
- (e) request a Council to make, amend or revoke regulations respecting any of the matters specified in its applicable Part; and
- (f) review legislation respecting the provision of health services by health disciplines.

(2) Where the Minister requests in writing that a Council make, amend or revoke a regulation under clause *e* of subsection 1 and the Council has failed to do so within sixty days after the request, the Lieutenant Governor in Council may make the regulation, amendment or revocation specified in the request.

(3) The Minister may appoint such advisory committees as he considers desirable and appropriate to assist him in carrying out his duties under this Act.

4. Where the Minister proposes changes to be made in legislation or regulations respecting a health discipline, the Minister shall distribute the proposals to all health disciplines and all health disciplines are entitled to make submissions to the Minister with respect to such proposals.

5. Where a College has incurred expenses in complying with the directions of the Minister under this Part, the Minister may, out of moneys appropriated therefor by the Legislature, make appropriate payments to reimburse the College in whole or in part for the expenses incurred.

6.—(1) There is hereby established a body to be known as the Health Disciplines Board.

(2) The Board shall be composed of not fewer than five and not more than seven members who shall be appointed by the Lieutenant Governor in Council on the recommendation of the Minister, and the Lieutenant Governor in Council shall designate one of the members of the Board to be chairman and one to be vice-chairman.

(3) No person who is employed in the public service of Ontario or of any agency of the Crown, or who is or has been

a member of a Council or who is or has been registered under this Act or any other Act governing a health practice shall be a member of the Board.

Term (4) The members of the first Board may be appointed for a term of one, two or three years and thereafter appointments and reappointments shall be for a term of three years.

Vacancies (5) Every vacancy on the Board caused by the death, resignation or incapacity of a member, may be filled by the appointment by the Lieutenant Governor in Council of a person to hold office for the remainder of the term of such member.

Quorum (6) A majority of the members of the Board constitutes a quorum.

Remuneration (7) The members of the Board shall be paid such remuneration and expenses as are determined by the Lieutenant Governor in Council.

Seal (8) The Board may prescribe and adopt a seal.

Board employees (9) Such employees as are necessary to carry out the duties of the Board under this Act shall be employed under *The Public Service Act*.

R.S.O. 1970,
c. 386

Duties of
Board

7.—(1) The Board shall,

(a) conduct such hearings and perform such duties as are assigned to it by or under this or any other Act; and

(b) submit an annual report on its activities to the Minister and which shall include such information as the Minister may require.

Legal advice (2) The Board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

Complaints **8.**—(1) Where a complaints committee has made a disposition of a complaint respecting a member of its College in

accordance with the provisions of the applicable Part of this Act governing that College, the Registrar of the College shall send to the member and to the complainant by prepaid first class mail, a copy of the written decision made by the complaints committee together with notice advising the complainant of his right of review under subsection 2.

(2) A complainant or the member complained against who is not satisfied with the decision made by a complaints committee disposing of a complaint, except a decision to refer a matter to the discipline committee, may within twenty days of receipt of the written decision request the Board to review the decision and the Board shall require the Registrar of the College to transmit to the Board within fifteen days of the Board's request, a record of the investigation and all such documents and things upon which the decision was based and the Board shall review the decision.

9. Where a complaint respecting a member of a College has not been disposed of by the complaints committee of the College within sixty days after the complaint is made, the Board upon application therefor may require the complaints committee to make an investigation and, where the investigation of the complaint has not been undertaken, completed and reported on to the Board by the committee within sixty days after the Board's request, the Board shall undertake such investigation and possesses all the powers of investigation that the complaints committee has conferred upon it in the applicable Part of this Act.

10.—(1) The Board may after review or investigation of a complaint under section 8 or 9 refer the complaint to the complaints committee and the Board may,

- (a) confirm the decision, if any, made by the complaints committee;
- (b) make such recommendations to the complaints committee as the Board considers appropriate; or
- (c) require the complaints committee to take such action or proceedings as the committee is authorized to undertake under the applicable Part of this Act.

(2) Three members of the Board constitute a quorum for purposes of investigation or review of a complaint under section 8 or 9 or a hearing under section 11.

Notice of
proposal
to refuse
registration

11.—(1) Where a registration committee proposes to refuse to grant registration to an applicant, or proposes to attach terms, conditions or limitations to a registration, the Registrar on behalf of the committee shall serve notice of the proposal of the committee, together with written reasons therefor, on the applicant or registrant and a copy thereof to the Board.

Exemptions

(2) Subsection 1 does not apply to a refusal to grant registration to a person who was previously registered and whose registration was suspended or revoked as a result of a decision of a discipline committee.

Notice
requiring
hearing or
review

(3) A notice under subsection 1 shall inform the applicant or registrant that he is entitled to a hearing by the Board or to a review by the Board of his application and documentary evidence in support thereof without oral evidence, if he mails or delivers within fifteen days after the notice under subsection 1 is served on him, notice in writing to the Board requiring a hearing or such review by the Board, as he specifies.

Powers of
registration
committee
where
hearing
or review

(4) Where an applicant or registrant does not require a hearing or review by the Board in accordance with subsection 3, the Board shall so notify the registration committee making the proposal and the committee may carry out the proposal stated in its notice under subsection 1.

Findings
of fact

1971, c. 47

(5) The findings of fact of the Board pursuant to a hearing or review shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of *The Statutory Powers Procedure Act, 1971*.

Procedures on
hearings

(6) The provisions of subsections 2 to 5 and subsections 7 and 8 of section 12 apply *mutatis mutandis* to proceedings before the Board under this section.

Powers of
Board
upon hearing
upon hearing
or review

(7) The Board shall, after the hearing or review,

- (a) confirm the proposed decision of the registration committee; or
- (b) require the registration committee to permit the applicant to take qualifying examinations or additional training as a condition for registration, or both as specified by the registration committee; or
- (c) require the registration committee to direct the Registrar to register the applicant on any appro-

priate register subject to such conditions as the Board considers appropriate in cases where the Board finds that the applicant meets the requirements for registration and that the committee has exercised its powers improperly; or

- (d) refer the matter back to the registration committee for further consideration and the Board may make such recommendations as it considers appropriate in the circumstances.

(8) The registration committee and the applicant or ^{Parties} registrant are parties to proceedings before the Board under this section.

(9) Any party to proceedings before the Board under this ^{Appeals} section may appeal from its decision or order to the Supreme Court in accordance with the rules of court and the provisions of section 13 apply *mutatis mutandis* as if it were an appeal from a decision or order of a discipline committee.

12.—(1) In proceedings before the discipline committee ^{Parties to discipline proceedings} of a College, the College and the member of the College whose conduct is being investigated in the proceedings are parties to the proceedings.

(2) A member whose conduct is being investigated in ^{Examination of documentary evidence} proceedings before a discipline committee shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which shall be given in evidence at the hearing.

(3) Members of a discipline committee holding a hearing ^{Members holding hearing not to have taken part in investigation, etc.} shall not have taken part before the hearing in any investigation of the subject-matter of the hearing other than as a member of the Council considering the referral of the matter to the discipline committee, and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the committee may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

(4) Notwithstanding anything in *The Statutory Powers Procedure Act, 1971*, hearings of the discipline committee shall be held *in camera*, but, if the person whose conduct is being investigated requests otherwise by a notice delivered to the Registrar before the day fixed for the hearing, the committee shall conduct the hearing in public except where,

(a) matters involving public security may be disclosed; or

(b) the possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public.

Recording of evidence

(5) The oral evidence taken before a discipline committee shall be recorded and, if so required, copies or a transcript thereof shall be furnished only to the parties at their own cost.

Evidence 1971, c. 47

(6) Notwithstanding *The Statutory Powers Procedure Act, 1971* nothing is admissible in evidence before a discipline committee that would be inadmissible in a court in a civil case and the findings of a discipline committee shall be based exclusively on evidence admitted before it.

Only members at hearing to participate in decision

(7) No member of a discipline committee shall participate in a decision of the committee pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties.

Release of documentary evidence

(8) Documents and things put in evidence at a hearing of a discipline committee shall, upon the request of the person who produced them, be released to him by the committee within a reasonable time after the matter in issue has been finally determined.

Appeal to court

13.—(1) Any party to proceedings before a discipline committee may appeal from its decision or order to the Supreme Court in accordance with the rules of court.

Powers of court on appeal

(2) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the committee appealed from and may exercise all powers of the committee and may direct the committee or the College to take any action which the committee or the College may take and as the court considers proper, and for such purposes the court may substitute its opinion for that of the committee, or the court may refer the matter back to the committee for rehearing, in whole or in part, in accordance with such directions as the court considers proper.

Service of notice

14.—(1) Except where otherwise provided, any notice or document required by this Act to be served may be served personally or by prepaid first class mail addressed to the person to whom notice is to be given at his last known address and, where notice is served by mail, the service shall be deemed to have been made on the fifth day after the day of mailing unless the person to whom notice is given establishes that he, acting in good faith, through absence,

accident, illness or other cause beyond his control, did not receive the notice, or did not receive the notice until a later date.

(2) Every member of the Health Disciplines Board and of the discipline committee of a College has power to administer oaths and affirmations for the purposes of any of its proceedings.

15. Any statement containing information from the records required to be kept by a Registrar under any Part of this Act, purporting to be certified by the Registrar under the seal of the College is admissible in evidence in all courts as *prima facie* proof of the facts stated therein without proof of the appointment or signature of the Registrar and without proof of the seal.

16. No action or other proceeding for damages shall be instituted against the Board, a College, a Council, a committee or any member of the Board, Council or committee, or any officers, servants, agents or appointees of the Board, or a College for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act, a regulation or a by-law, or for any neglect or default in the performance or exercise in good faith of such duty or power.

17. No duly registered member of a College is liable to any action for negligence or malpractice, by reason of professional services requested or rendered, unless such action is commenced within two years from the date when, in the matter complained of, such services terminated, except that the court may extend the time for commencing an action, either before or after the time so limited, on such terms as it considers proper, where it is satisfied that there are *prima facie* grounds for relief and that no substantial prejudice or hardship will result to any person affected by reason of the delay.

18.—(1) Any person who makes or causes to be made any wilful falsification in any matter relating to a register or issues a false certificate or document with respect to registration is guilty of an offence and on summary conviction is liable to a fine of not more than \$5,000.

(2) Any person who wilfully procures or attempts to procure himself to be registered under this Act by knowingly making any false representation or declaration or by making a fraudulent representation or declaration, either orally or in writing, is guilty of an offence and on summary conviction is liable to a fine of not more than \$5,000 and every person knowingly aiding and assisting him therein is guilty of an offence and on summary conviction is liable to a fine of not more than \$5,000.

Onus of
proof
respecting
registration

19. Where registration under this Act is required to permit the lawful doing of any act or thing, if in any prosecution it is proven that the accused has done such act or thing, the burden of proving that he was so registered under this Act rests upon the accused.

PART II

DENTISTRY

Interpre-
tation

20.—(1) In this Part,

- (a) “by-laws” means the by-laws made under this Part;
- (b) “College” means the Royal College of Dental Surgeons of Ontario;
- (c) “Council” means the Council of the College;
- (d) “licence” means a licence for the practice of dentistry issued under this Part;
- (e) “member” means a member of the College;
- (f) “practice of dentistry” means any professional service usually performed by a dentist or a dental surgeon, and includes,
 - (i) the diagnosis or treatment of, and the prescribing, treating or operating for the prevention, alleviation or correction of any disease, pain, deficiency, deformity, defect, lesion, disorder or physical condition of, in or from any human tooth, jaw or adjacent structure or tissue or any injury thereto,
 - (ii) the making, producing, reproducing, constructing, fitting, furnishing, supplying, altering or repairing or prescribing or advising the use of any prosthetic denture, bridge, appliance or thing for any of the purposes indicated in subclause i, to be used in, upon or in connection with any human tooth, jaw or associated structure or tissue or in the treatment of any condition thereof, or replacing, improving or supplementing any human tooth, associated structure or tissue, and
 - (iii) the taking or making, or the giving of advice or assistance or the providing of facilities for

the taking or making of any impression, bite, cast or design preparatory to, or for the purpose of, or with a view to the making, producing, reproducing, constructing, fitting, furnishing, supplying, altering or repairing of any such prosthetic denture, bridge, appliance or thing;

(g) "Registrar" means the Registrar of the College;

(h) "regulations" means the regulations made under this Part.

(2) The practice of dentistry is a health discipline to which ^{Health discipline} applies.

21.—(1) The Royal College of Dental Surgeons of Ontario ^{Royal College of Dental Surgeons} is continued as a body corporate without share capital with ^{continued} power to acquire, hold and dispose of real and personal property for the purposes of this Part.

(2) The objects of the College are,

Objects

(a) to regulate the practice of dentistry and to govern its members in accordance with this Act, the regulations and the by-laws;

(b) to establish, maintain and develop standards of knowledge and skill among its members;

(c) to establish, maintain and develop standards of qualification and practice for the practice of dentistry;

(d) to establish, maintain and develop standards of professional ethics among its members;

(e) to administer this Part and perform such other duties and exercise such other powers as are imposed or conferred on the College by or under any Act,

in order that the public interest may be served and protected.

22.—(1) Every person licensed by the College is a member ^{Membership} of the College subject to any term, condition or limitation to which the licence is subject.

(2) A member may resign his membership by filing with ^{Resignation of} the Registrar his resignation in writing and his licence is ^{membership} thereupon cancelled, subject to the continuing jurisdiction

of the College in respect of any disciplinary action arising out of his professional conduct while a member.

Cancellation
for default
of fees

(3) The Registrar may cancel a licence for non-payment of any fee prescribed by the regulations after giving the member at least two months notice of the default and intention to cancel, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

Council of
College

23.—(1) The Board of Directors of the College is continued as the Council of the College, which shall be the governing body and board of directors of the College and shall manage and administer its affairs.

Composition
of Council

(2) The Council shall be composed of,

- (a) not fewer than nine and not more than twelve persons who are members elected in the number and manner determined by the regulations;
- (b) not fewer than three and not more than five persons who are not members of a Council under this Act or registered or licensed under this Act or any other Act governing a health practice and are appointed by the Lieutenant Governor in Council; and
- (c) one person who is appointed by the faculty of dentistry of each university that conducts a course in dentistry and is authorized to grant degrees in dentistry, such person to be appointed from among the members of the faculty.

Remunera-
tion of lay
members

(3) The persons appointed under clause *b* of subsection 2 shall be paid, out of moneys appropriated therefor by the Legislature, such expenses and remuneration as is determined by the Lieutenant Governor in Council.

Expiration
of appoint-
ment

(4) The appointment of every person appointed under subsection 2 expires at the first meeting of the Council following the election of members to Council held next after the effective date of his appointment, and a person whose appointment expires is eligible for reappointment.

Qualifica-
tions to
vote

(5) Every member who,

- (a) practises in Ontario; and
- (b) is not in default of payment of the annual fee prescribed by the regulations,

is qualified to vote at an election of members of the Council.

(6) The Council shall elect a President and Vice-President ^{President and Vice-President} from among its members.

(7) The Council shall appoint during pleasure a Registrar ^{Registrar, Treasurer, Secretary and staff}, and such other officers and servants as may from time to time be necessary in the opinion of the Council to perform the work of the College.

(8) A majority of the members of the Council constitute ^{Quorum} a quorum.

(9) The members of the Council who were elected under ^{Continuation of} *The Dentistry Act*, being chapter 108 of the Revised Statutes ^{Council members} of Ontario, 1970 and were in office immediately before this ^{under R.S.O. 1970, c. 108} Part comes into force shall continue in office and shall be deemed to be the members referred to in clause *a* of subsection 2 until the expiration of the term for which they were elected or until the office otherwise becomes vacant.

24. In addition to his powers and duties under Part I, ^{Powers of Minister} the Minister may,

- (a) review the activities of the Council;
- (b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;
- (c) advise the Council with respect to the implementation of this Part and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures.

25. Subject to the approval of the Lieutenant Governor ^{Regulations} in Council and with prior review by the Minister, the Council may make regulations,

- (a) fixing the number of members to be elected to the Council and establishing electoral districts and regional representation for elections;
- (b) respecting and governing the qualifications, nomination, election and term of office of the members to be elected, and controverted elections;
- (c) prescribing the conditions disqualifying elected members from sitting on the Council and governing the filling of vacancies on the Council;
- (d) respecting any matter ancillary to the provisions of this Part with regard to the issuing, suspension and revocation of licences;

- (e) prescribing classes of licences and governing the requirements and qualifications for the issuing of licences or any class thereof and prescribing the terms and conditions thereof;
- (f) providing for the maintenance and inspection of registers of persons permitted to practise;
- (g) governing standards of practice for the profession;
- (h) prescribing the records that shall be kept respecting patients;
- (i) requiring and providing for the inspection and examination of the office, records and equipment of members in connection with their practice;
- (j) regulating the compounding, dispensing and sale of drugs by members and the containers and labelling therefor, prescribing the records that shall be kept and requiring reports to the Minister respecting such compounding, dispensing and sale;
- (k) defining classes of specialists in the various branches of dentistry, prescribing the qualifications required, providing for the suspension or revocation of any such designation, and for the regulation and prohibition of the use of terms, titles, or designations by members indicating specialization in any branch of dentistry;
- (l) authorizing persons other than members to perform specified acts in the practice of dentistry under the supervision or direction of a member;
- (m) prohibiting the practice of dentistry where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
- (n) defining professional misconduct for the purposes of this Part;
- (o) providing for a program of continuing education of members to maintain their standard of competence and requiring members to participate in such continuing education;
- (p) regulating, controlling and prohibiting the use of terms, titles or designations by members or groups or associations of members in respect to their practices;
- (q) respecting the reporting and publication of decisions in disciplinary matters;
- (r) providing for the compilation of statistical information on the supply, distribution and pro-

fessional activities of members and requiring members to provide the information necessary to compile such statistics, for any purpose that may tend to advance scientific knowledge and maintain the standards of practice of dentistry;

- (s) respecting the duties and authority of the Registrar;
- (t) requiring the payment of annual fees by members and fees for licensing, examinations and continuing education, including penalties for late payment, and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof;
- (u) prescribing forms for the purposes of this Part and providing for their use;
- (v) providing for the exemption of any member from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable.

26.—(1) The Council may pass by-laws relating to the ^{By-laws} administrative and domestic affairs of the College not inconsistent with this Act and the regulations and without limiting the generality of the foregoing,

- (a) prescribing the seal of the College;
- (b) providing for the execution of documents by the College;
- (c) respecting banking and finance;
- (d) fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;
- (e) providing procedures for the election of President and Vice-President of the College, the filling of a vacancy in those offices, and prescribing the duties of the President and Vice-President;
- (f) respecting the calling, holding and conducting of meetings of the Council and the duties of members of Council;
- (g) prescribing the remuneration of the members of the Council and committees, other than persons appointed by the Lieutenant Governor in Council, and providing for the payment of necessary expenses of the Council and committees in the conduct of their business;
- (h) providing for the appointment, composition, powers and duties of such additional or special committees as may be required;

- (i) delegating to the Executive Committee such powers and duties of the Council as are set out in the by-law, other than the power to make, amend or revoke regulations and by-laws;
- (j) providing for a code of ethics;
- (k) providing for the appointment of inspectors for the purposes of this Part;
- (l) prescribing forms and providing for their use;
- (m) providing procedures for the making, amending and revoking of the by-laws;
- (n) respecting management of the property of the College;
- (o) respecting the application of the funds of the College and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;
- (p) providing for the entering into arrangements by the College for its members respecting indemnity for professional liability and respecting the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members and exempting members or any class thereof from all or part of any such levy;
- (q) respecting membership of the College in any national organization with similar functions, the payment of an annual assessment and provision for representatives at meetings;
- (r) respecting all of the things that are considered necessary for the attainment of the objects of the College and the efficient conduct of its affairs.

Idem

- (2) A copy of the by-laws made under subsection 1 and amendments thereto,

- (a) shall be forwarded to the Minister;

- (b) shall be available for public inspection in the office of the College.

Signing by-laws and resolutions

- (3) Any by-law or resolution signed by all the members of the Council is as valid and effective as if passed at a meeting of the Council duly called, constituted and held for that purpose.

By-laws for list of members participating in low cost denture service

27.—(1) Subject to the approval of the Lieutenant Governor in Council, the Council shall, by by-law,

- (a) provide for the preparation of a list of members participating in the low cost denture service; and
- (b) determine the members who shall be included in the list,

for the purposes of this section.

(2) A member who participates in the low cost denture service shall provide full upper and lower standard prosthetic dentures to any person other than a person with an abnormality or degenerative disease of the mouth for a cost which shall not exceed \$180 including the laboratory costs and the professional fee in respect of fitting services, and no denture of a quality higher than standard and no additional services shall be provided or charged for by the member without the specific consent of the patient.

(3) A member who participates in the low cost denture service shall display public notice of the fact in his office in a form prescribed by the Council by by-law approved by the Lieutenant Governor in Council.

(4) A member who is in breach of any provision of this section shall be deemed to be guilty of professional misconduct for the purposes of subsection 3 of section 37.

(5) The Council shall make such by-laws as it considers necessary for the purpose of promoting and encouraging participation by members in low cost denture services for the purposes of this section and for the establishment of clinics for the purpose.

(6) The Lieutenant Governor in Council may, by regulation, fix an amount for the maximum cost of the low cost denture service other than the amount named in subsection 2.

28.—(1) Where a prosthetic denture is supplied, altered or repaired by a member or under the supervision of a member as required by section 15 of *The Denture Therapists Act, 1972*, the laboratory costs incurred in respect of the supplying, altering or repairing of the prosthetic denture and all fees for services in respect thereof shall be rendered by the member and the account therefor shall show such laboratory costs separately from such fees and separately from all other charges and fees.

(2) No person is liable to pay an account that does not comply with the requirements of subsection 1.

29.—(1) No person shall engage in or hold himself out as engaging in the practice of dentistry unless he is licensed under this Part.

Proof of practice

(2) For the purposes of subsection 1, proof of the performance of one act in practice of dentistry on one occasion is sufficient to establish engaging in the practice of dentistry.

Exception re students

(3) Subsection 1 does not apply to a student of dentistry who practises dentistry within a prescribed training program under the supervision of a member who is physically present.

Exception re denture therapists

1972, c. 163

(4) Nothing done in the practice of denture therapy as defined in *The Denture Therapists Act, 1972* by a denture therapist licensed thereunder shall be deemed to be a contravention of this section.

Conflict with other health discipline

(5) A licence shall be deemed to authorize a member to engage in the practice of dentistry, notwithstanding that any part of such practice is included in the practice of any other health discipline.

Establishment of committees

30.—(1) The Council shall establish and appoint as hereinafter provided the following committees,

- (a) Executive Committee;
- (b) Registration Committee;
- (c) Complaints Committee;
- (d) Discipline Committee,

and may establish such other committees as the Council from time to time considers necessary.

Vacancies

(2) Where one or more vacancies occur in the membership of the Council or any committee, the members remaining in office constitute the Council or committee so long as their number is not fewer than the prescribed quorum.

Executive Committee

31.—(1) The Executive Committee shall be composed of the President and Vice-President of the Council and not more than three other members of the Council, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

Quorum

(2) A majority of the members of the Executive Committee constitutes a quorum.

Duties

(3) The Executive Committee shall perform such functions of the Council as are delegated to it by the Council, the by-laws or this Part and may take action upon any other matter that requires immediate attention between meetings of the Council, other than to make, amend or revoke a regulation or by-law.

32.—(1) The Registration Committee shall be composed of three persons who are members of the Council, one of whom shall be a person appointed to the Council by the Lieutenant Governor in Council.

(2) The Council shall name one member of the Registration Committee to be Chairman.

(3) A majority of the members of the Registration Committee constitutes a quorum.

33.—(1) The Registrar shall issue a licence to any applicant therefor who is qualified under this Part and the regulations and has passed such examinations as the Council may set or approve, and the Registrar shall refer to the Registration Committee every application for a licence that he proposes to refuse or to which he considers terms, conditions or limitations should be attached.

(2) The Registration Committee,

Powers and duties of Registration Committee

- (a) shall determine the eligibility of applicants for licences and may require an applicant to take and pass such additional examinations as the Council may set or approve and pay such fee therefor as the Registration Committee fixes or to take such additional training as the Registration Committee specifies; and
- (b) may exempt an applicant from any licensing requirement.

(3) The Registration Committee may direct the Registrar to issue or refuse to issue licences or to issue licences subject to such terms, conditions and limitations as the Committee specifies.

(4) The Registration Committee may review the qualifications of any member and may impose a further term, condition or limitation on his licence pending the demonstration of such standard of competence through the completion of such experience, courses of study, or continuing education as the committee specifies.

(5) The Registrar shall maintain one or more registers in which is entered every person who is licensed to practise dentistry, identifying any specialist status and the terms, conditions and limitations attached to the licence, and shall

note on the register every revocation, suspension and cancellation of a licence or recognition of specialist status and such other information as the Registration Committee or Discipline Committee directs.

Continuation
of licences
R.S.O. 1970,
c. 108

(6) Every licence issued under *The Dentistry Act*, being chapter 108 of the Revised Statutes of Ontario, 1970, and in effect immediately before this Part comes into force continues in the same manner as if issued under this Part.

Complaints
Committee

34.—(1) The Complaints Committee shall be composed of three persons who are members of the Council, one of whom shall be a person appointed to the Council by the Lieutenant Governor in Council.

Idem

(2) No person who is a member of the Discipline Committee shall be a member of the Complaints Committee.

Chairman

(3) The Council shall name one member of the Complaints Committee to be its Chairman.

Quorum

(4) A majority of the members of the Complaints Committee constitutes a quorum.

Duties

35.—(1) The Complaints Committee shall consider and investigate complaints made by members of the public or members of the College regarding the conduct or actions of any member of the College, but no action shall be taken by the Committee under subsection 2 unless,

(a) a written complaint has been filed with the Registrar and the member whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations he may wish to make concerning the matter; and

(b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

Idem

(2) The Committee in accordance with the information it receives may,

(a) direct that the matter be referred, in whole or in part, to the Discipline Committee or to the Executive Committee for the purposes of section 38; or

- (b) direct that the matter not be referred under clause *a*; or
- (c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Part or the regulations or by-laws.

(3) The Committee shall give its decision in writing to the ^{Decision} Registrar for the purposes of section 8.

36.—(1) The Discipline Committee shall be composed of ^{Discipline} Committee eight members of the Council of whom two shall be persons appointed to the Council by the Lieutenant Governor in Council.

(2) The Council shall appoint one of the members of the ^{Chairman} Discipline Committee to be Chairman.

(3) The Chairman of the Discipline Committee may assign ^{Composition of panels} a panel of five members of the Committee to hold a hearing of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

(4) Three members of a panel assigned under subsection 3, ^{Quorum and votes} of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum for a hearing and all disciplinary decisions require the vote of a majority of members presiding at the hearing.

(5) Notwithstanding section 35, the Council or the Executive ^{Reference by Council or Executive Committee} Committee may direct the Discipline Committee to hold a hearing and determine any specified allegation of professional misconduct or incompetence on the part of a member.

37.—(1) The Discipline Committee shall,

^{Duties of Discipline Committee}

- (a) when so directed by the Council, Executive Committee or Complaints Committee, hear and determine allegations of professional misconduct or incompetence against any member;
- (b) hear and determine matters referred to it under section 35, 36 or 39; and
- (c) perform such other duties as are assigned to it by the Council.

(2) In the case of hearings into allegations of professional ^{Idem} misconduct or incompetence, the Discipline Committee shall,

- (a) consider the allegations, hear the evidence and ascertain the facts of the case;
- (b) determine whether upon the evidence and the facts so ascertained the allegations have been proved;
- (c) determine whether in respect of the allegations so proved the member is guilty of professional misconduct or incompetence;
- (d) determine the penalty to be imposed as hereinafter provided in cases in which it finds the member guilty of professional misconduct or of incompetence.

Professional misconduct (3) A member may be found guilty of professional misconduct by the Committee if,

- (a) he has been found guilty of an offence relevant to his suitability to practise upon proof of such conviction;
- (b) he has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.

Incompetence

(4) The Discipline Committee may find a member to be incompetent if in its opinion he has displayed in his professional care of a patient a lack of knowledge, skill or judgment or disregard for the welfare of the patient of a nature or to an extent that demonstrates he is unfit to continue in practice.

Powers of Discipline Committee

(5) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence it may by order,

- (a) revoke the licence of the member or withdraw recognition of his specialist status, or both;
- (b) suspend the licence of the member or recognition of his specialist status, or both, for a stated period;
- (c) impose such restrictions on the licence of the member for such a period and subject to such conditions as the Committee designates;
- (d) reprimand the member, and if deemed warranted, direct that the fact of such reprimand be recorded on the register;
- (e) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates,

or any combination thereof.

(6) Where the Discipline Committee is of the opinion ^{Costs} that the commencement of the proceedings was unwarranted, the Committee may order that the College reimburse the member for his costs or such portion thereof as the Discipline Committee fixes.

(7) Where the Discipline Committee revokes, suspends or ^{Stay on appeal for} restricts a licence or recognition of specialist status on the ^{incompetence} grounds of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

(8) Where the Discipline Committee revokes, suspends or ^{Stay on appeal for} restricts the licence or recognition of specialist status of a member on a ground other than for incompetence, the order ^{professional misconduct} shall not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned.

(9) Where the Discipline Committee finds a member guilty ^{Service of decision of Discipline Committee} of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the member.

(10) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his term of office had not expired or been terminated.

38.—(1) In this section,

Interpretation

(a) “board of inquiry” means a board of inquiry appointed by the Executive Committee under sub-section 2;

(b) “incapacitated member” means a member suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member that he no longer be permitted to practise or that his practice be restricted.

(2) Where the Registrar receives information leading him ^{Reference to board of inquiry} to believe that a member may be an incapacitated member, he shall make such inquiry as he considers appropriate and report to the Executive Committee who may, upon notice to

the member, appoint a board of inquiry composed of at least two members of the College and one member of the Council appointed thereto by the Lieutenant Governor in Council who shall inquire into the matter.

Examination

(3) The board of inquiry shall make such inquiries as it considers appropriate and may require the member to submit to physical or mental examination by such qualified person as the board designates and if the member refuses or fails to submit to such examination the board may order that his licence be suspended until he complies.

Hearing by Registration Committee

(4) The board of inquiry shall report its findings to the Executive Committee and deliver a copy thereof and a copy of any medical report obtained under subsection 3 to the member about whom the report is made and if, in the opinion of the Executive Committee, the evidence so warrants, the Executive Committee shall refer the matter to the Registration Committee to hold a hearing and may suspend the member's licence until the determination of the question of his capacity becomes final.

Parties

(5) The College, the person whose capacity is being investigated and any other person specified by the Registration Committee are parties to the hearing.

Medical evidence

(6) A legally qualified medical practitioner is not compellable to produce at the hearing his case histories, notes or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment and such report shall be signed by him and served upon the other parties to the proceedings,

- (a) where the evidence is required by the College, at least five days before the hearing commences; and
- (b) where the evidence is required by the person about whom the report is made, at least five days before its introduction as evidence,

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

Powers of Registration Committee

- (7) The Registration Committee shall, after the hearing,
 - (a) make a finding as to whether or not the member is an incapacitated member; and

- (b) where the member is found to be an incapacitated member by order,
 - (i) revoke his licence,
 - (ii) suspend his licence for such period as the Committee considers appropriate, or
 - (iii) attach such terms and conditions to the licence as the Committee considers appropriate.

(8) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration and appeals therefrom apply, *mutatis mutandis*, to proceedings of the Registration Committee under this section, except that the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

39.—(1) A person whose licence has been revoked or suspended for cause under this Part, or a predecessor of this Part, may apply in writing to the Registrar for the issuance of a licence or removal of the suspension, but except with the consent of the Council such application shall not be made sooner than one year after the revocation or, where the suspension is for more than one year, one year after the suspension.

(2) The Registrar shall refer the application to the Discipline Committee or, where the revocation or suspension was on the grounds of incapacity, to the Registration Committee which shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Council and to the former member.

(3) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration except subsection 9 of section 11 apply, *mutatis mutandis*, to proceedings of the Registration Committee and Discipline Committee under this section.

40.—(1) Where the Registrar believes on reasonable and probable grounds that a member has committed an act of professional misconduct or incompetence, the Registrar may by order appoint one or more persons to make an investigation to ascertain whether such an act has occurred, and the person appointed shall report the result of his investigation to the Registrar.

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make

1971, c. 49

the investigation may inquire into and examine the practice of the member in respect of whom the investigation is being made and may, upon production of his appointment, enter at any reasonable time the business premises of such person and examine books, records, documents and things relevant to the subject-matter of the investigation, and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to such inquiry as if it were an inquiry under that Act.

Obstruction
of
investigator

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation.

Search
warrant

(4) Where a provincial judge is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the provincial judge may, whether or not an inspection has been made or attempted under subsection 2, issue an order authorizing the person making the investigation, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the provincial judge, by the order, authorizes the person making the investigation to make the search at night.

Removal of
books, etc.

(5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, records, documents or things examined under subsection 2 or 4 relating to the member whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, records or documents, but such copying shall be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member whose practice is being investigated.

Admissi-
bility
of copies

(6) Any copy made as provided in subsection 5 and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding

or prosecution as *prima facie* proof of the original book, record or document and its contents.

(7) The Registrar shall report the results of the investigation to the Council or the Executive Committee or such other Committee as he considers appropriate. Report of Registrar

41.—(1) Every person employed in the administration Matters confidential of this Part, including any person making an inquiry or investigation under section 40 and any member of the Council or a Committee, shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry or investigation under section 40 and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Part and the regulations and by-laws or any proceedings under this Part or the regulations;
- (b) as may be required for the enforcement of *The Health Insurance Act, 1972*;
- (c) to his counsel; or
- (d) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry or investigation except in a proceeding under this Part or the regulations or by-laws. Testimony in civil suit

42.—(1) Where it appears to the College that any person does not comply with any provision of this Part or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the College may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit. Restraining orders

(2) An appeal lies to the Supreme Court from an order made under subsection 1. Appeal

Penalties

43.—(1) Every person who is in contravention of section 29 is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both.

Idem

(2) Every person who, not being a member, uses an occupational designation prescribed by the regulations to be used by members or a like designation is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$1,000 and for each subsequent offence to a fine of not more than \$2,000.

Idem

(3) Any person who obstructs a person appointed to make an investigation under section 40 in the course of his duties is guilty of an offence and on summary conviction is liable to a fine not exceeding \$2,000.

Repeals

44.—(1) *The Dentistry Act*, being chapter 108 of the Revised Statutes of Ontario, 1970, except section 12 thereof, and *The Dentistry Amendment Act, 1972*, being chapter 141 are repealed.

Idem

(2) For the purposes of section 12 of *The Dentistry Act*, the Council shall be deemed to be the Board referred to therein.

References

(3) Any reference in any Act or regulation to *The Dentistry Act* shall be deemed to be a reference to this Part.

PART III

MEDICINE

Interpre-
tation

45.—(1) In this Part,

- (a) “by-laws” means the by-laws made under this Part;
- (b) “College” means the College of Physicians and Surgeons of Ontario;
- (c) “Council” means the Council of the College;
- (d) “licence” means a licence for the practice of medicine issued under this Part;
- (e) “member” means a member of the College;

- (f) "practice of medicine" includes the practice of surgery and obstetrics;
- (g) "prescribed" means prescribed by the regulations or by-laws made under this Part;
- (h) "Registrar" means the Registrar of the College;
- (i) "regulations" means the regulations made under this Part.

(2) The practice of medicine is a health discipline to which ^{Health discipline} this Part applies.

46.—(1) The College of Physicians and Surgeons of Ontario ^{College of Physicians and Surgeons continued} is continued as a body corporate without share capital with power to acquire, hold and dispose of real and personal property for the purposes of this Part.

(2) The objects of the College are, Objects

- (a) to regulate the practice of medicine and to govern its members in accordance with this Act, the regulations and the by-laws;
- (b) to establish, maintain and develop standards of knowledge and skill among its members;
- (c) to establish, maintain and develop standards of qualification and practice for the practice of medicine;
- (d) to establish, maintain and develop standards of professional ethics among its members;
- (e) to administer this Part and perform such other duties and exercise such other powers as are imposed or conferred on the College by or under any Act;
- (f) such other objects relating to human health care as the Council considers desirable,

in order that the public interest may be served and protected.

47.—(1) Every person licensed by the College is a member ^{Membership in the College} of the College subject to any term, condition or limitation to which the licence is subject.

(2) A member may resign his membership by filing with the Registrar his resignation in writing and his licence is ^{Resignation of membership} thereupon cancelled subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

Cancellation
for default
of fees

(3) The Registrar may cancel a licence for non-payment of any prescribed fee after giving the member at least two months notice of the default and intention to cancel subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct as a member.

Council of
the College

48.—(1) The Council of the College is continued and shall be the governing body and board of directors of the College and shall manage and administer its affairs.

Composition
of Council

(2) The Council shall be composed of,

- (a) one person who is appointed by the faculty of medicine of each university in Ontario that conducts a course in medicine and is authorized to grant degrees in medicine, such person to be appointed from among the members of the faculty;
- (b) not fewer than four and not more than six persons who are not members of a Council under this Act or registered or licensed under this Act or any other Act governing a health practice, and are appointed by the Lieutenant Governor in Council; and
- (c) not fewer than twelve and not more than sixteen persons who are members and are elected by the members in the manner provided by the regulations.

Remuner-
ation
of lay
members

(3) The persons appointed under clause *b* of subsection 2 shall be paid out of moneys appropriated therefor by the Legislature such expenses and remuneration as is determined by the Lieutenant Governor in Council.

Expiration
of appoint-
ment

(4) The appointment of every person appointed under subsection 2 expires at the first regular meeting of the Council following the election of members to Council held next after the effective date of his appointment, and a person whose appointment expires is eligible for reappointment.

Qualifi-
cations
to vote

(5) Every member who is,

- (a) resident in Ontario;
- (b) licensed to practise medicine and not limited to practising for educational purposes only; and
- (c) not in default of payment of the prescribed annual fee,

is qualified to vote at an election of members of the Council.

(6) The Council shall elect annually a President and Vice-President from among its members.

(7) The Council shall appoint during pleasure a Registrar and such other officers and servants as may from time to time be necessary or desirable in the opinion of the Council to perform the work of the College.

(8) A majority of the members of the Council constitutes a quorum.

(9) The members of the Council who were elected under *The Medical Act*, being chapter 268 of the Revised Statutes of Ontario, 1970 and were in office immediately before this Part comes into force shall continue in office and shall be deemed to be the members referred to in clause *a* of subsection 2 until the expiration of the term for which they were elected or until the office otherwise becomes vacant.

49. In addition to his powers and duties under Part I, the Minister may,

- (a) review the activities of the Council;
- (b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;
- (c) advise the Council with respect to the implementation of this Part and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures.

50. Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations.

- (a) fixing the number of members to be elected to the Council and establishing electoral districts for elections;
- (b) respecting and governing the qualifications, nomination, election and term of office of the members to be elected to the Council, and controverted elections;
- (c) prescribing the conditions disqualifying elected members from sitting on the Council and governing the filling of vacancies on the Council;

- (d) respecting any matter ancillary to the provisions of this Part with regard to the issuing, suspension and revocation of licences;
- (e) prescribing classes of licences and governing the requirements and qualifications for the issuing of licences or any class thereof and prescribing the terms and conditions thereof;
- (f) providing for the maintenance and inspection of registers of persons permitted to practise and for the issuance of certificates of standing by the Registrar;
- (g) governing standards of practice for the profession;
- (h) defining classes of specialists in the various branches of medicine, prescribing the qualifications required, providing for the suspension or revocation of any such designation, and for the regulation and prohibition of the use of terms, titles, or designations by members indicating specialization in any branch of medicine;
- (i) regulating the compounding, dispensing and sale of drugs by members and the containers and labelling therefor, prescribing the records that shall be kept and requiring reports to the Minister respecting such compounding, dispensing and sale;
- (j) governing the designation of life members of the College and prescribing their rights and privileges;
- (k) authorizing persons other than members to perform specified acts in the practice of medicine under the supervision or direction of a member;
- (l) prohibiting the practice of medicine where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
- (m) defining professional misconduct for the purposes of this Part;
- (n) providing for a program of continuing education of members to maintain their standard of competence and requiring members to participate in such continuing education;
- (o) regulating, controlling and prohibiting the use of terms, titles or designations by members or groups or associations of members in respect of their practices;

- (p) prescribing the minimum number of members who may constitute a clinic and the minimum range of medical services that shall be provided in a clinic;
- (q) respecting the reporting and publication of decisions in disciplinary matters;
- (r) requiring and providing for the inspection and examination of books, accounts, reports and medical records of members in connection with their practice;
- (s) providing for the compilation of statistical information on the supply, distribution and professional activities of members and requiring members to provide the information necessary to compile such statistics;
- (t) respecting the duties and authority of the Registrar;
- (u) requiring the payment of fees by members and fees for licensing, examinations and continuing education, including penalties for late payment and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof;
- (v) prescribing forms and providing for their use;
- (w) providing for the exemption of any member from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable.

51.—(1) The Council may pass by-laws relating to the By-laws administrative and domestic affairs of the College not inconsistent with this Act and the regulations and without limiting the generality of the foregoing,

- (a) prescribing the seal of the College;
- (b) providing for the execution of documents by the College;
- (c) respecting banking and finance;
- (d) fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;
- (e) providing procedures for the election of President and Vice-President of the College, the filling of a vacancy in those offices, and prescribing the duties of the President and Vice-President;
- (f) respecting the calling, holding and conducting of meetings of the Council and the duties of members of Council;

- (g) respecting the calling, holding and conducting of meetings of the membership of the College;
- (h) prescribing the remuneration of the members of the Council and committees other than persons appointed by the Lieutenant Governor in Council and providing for the payment of necessary expenses of the Council and committees in the conduct of their business;
- (i) providing for the appointment, composition, powers and duties of such additional or special committees as may be required;
- (j) delegating to the Executive Committee such powers and duties of the Council as are set out in the by-law, other than the power to make, amend or revoke regulations and by-laws;
- (k) providing for a code of ethics;
- (l) prescribing forms and providing for their use;
- (m) providing procedures for the making, amending and revoking of the by-laws;
- (n) respecting management of the property of the College;
- (o) respecting the application of the funds of the College and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;
- (p) providing for the entering into arrangements by the College for its members respecting indemnity for professional liability and respecting the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members and exempting members or any class thereof from all or part of any such levy;
- (q) providing for the establishment, maintenance and administration of a benevolent fund for needy practitioners in Ontario and the dependants of deceased members;
- (r) respecting membership of the College in a national organization with similar functions, the payment of an annual assessment and provision for representatives at meetings;

(s) respecting all of the things that are considered necessary for the attainment of the objects of the College and the efficient conduct of its affairs.

(2) A copy of the by-laws made under subsection 1 and ^{Idem} amendments thereto,

(a) shall be forwarded to the Minister;

(b) shall be forwarded to each member; and

(c) shall be available for public inspection in the office of the College.

(3) Any by-law or resolution signed by all members of the Council is as valid and effective as if passed at a meeting of the Council duly called, constituted and held for the purpose.

52.—(1) No person shall engage in or hold himself out ^{Licence to practise} as engaging in the practice of medicine unless he is licensed under this Part.

(2) For the purposes of subsection 1,

Exceptions

(a) rendering first aid or temporary assistance in an emergency without fee; or

(b) the administration of household remedies by members of the patient's household,

shall be deemed not to be engaging in the practice of medicine.

(3) For the purposes of this section, proof of the performance of one act in practice of medicine on one occasion is sufficient to establish engaging in the practice of medicine.

(4) A licence shall be deemed to authorize a member or person authorized by the regulations to engage in the practice of medicine, notwithstanding that any part of such practice is included in the practice of any other health discipline.

53.—(1) The Council shall establish and appoint as herein-after provided the following committees,

(a) Executive Committee;

(b) Registration Committee;

(c) Complaints Committee;

Establishment of committees

(d) Discipline Committee;

(e) Fitness to Practise Committee,

and may establish such other committees as the Council from time to time considers necessary.

Medical
Review
Committee
1972, c. 91

(2) The Council may give the Medical Review Committee established under *The Health Insurance Act, 1972*, such other duties as the Council considers appropriate and that are not inconsistent with its duties under that Act.

Vacancies

(3) Where one or more vacancies occur in the membership of the Council or any committee, the members remaining in office constitute the Council or committee so long as their number is not fewer than the prescribed quorum.

Executive
Committee

54.—(1) The Executive Committee shall be composed of,

- (a) the President, who shall be Chairman of the Committee;
- (b) the Vice-President; and
- (c) three persons who are members of the Council, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

Quorum

(2) A majority of the members of the Executive Committee constitutes a quorum.

Duties

(3) The Executive Committee shall perform such functions of the Council as are delegated to it by the Council, the by-laws or this Part and, subject to ratification by the Council at its next ensuing meeting, may take action upon any other matter that requires immediate attention between meetings of the Council, other than to make, amend or revoke a regulation or by-law.

Regis-
tration
Committee

55.—(1) The Registration Committee shall be composed of,

- (a) one member of the Council who was appointed to the Council by a university;
- (b) two members of the Council who were elected to the Council;
- (c) one member of the Council who was appointed to the Council by the Lieutenant Governor in Council; and
- (d) the President and Vice-President, *ex officio*.

(2) The Council shall name one member of the Registration Committee to be Chairman.

(3) A majority of the members of the Registration Committee constitutes a quorum.

56.—(1) The Registrar shall issue a licence to any applicant therefor who is qualified under this Part and the regulations and has passed such examinations as the Council may set or approve, and the Registrar shall refer to the Registration Committee every application for a licence that he proposes to refuse or to which he considers terms, conditions or limitations should be attached.

(2) The Registration Committee;

- (a) shall determine the eligibility of applicants for licences and may require an applicant to take and pass such additional examinations as the Council may set or approve and pay such fees therefor as the Registration Committee fixes or to take such additional training as the Registration Committee specifies; and
- (b) may exempt an applicant from any licensing requirement

(3) The Registration Committee may direct the Registrar to issue or refuse to issue licences or to issue licences subject to such terms, conditions and limitations as the Committee specifies.

(4) The Registration Committee may review the qualifications of any member and may impose a further term, condition or limitation on his licence pending the demonstration of such standard of competence through the completion of such experience, courses of study or continuing education as the Committee specifies.

(5) The Registrar shall maintain one or more registers in which is entered every person who is licensed to practise medicine, identifying any specialist status and the terms, conditions and limitations attached to the licence, and shall note on the register every revocation, suspension and cancellation of a licence or recognition of specialist status and such other information as the Registration Committee or Discipline Committee directs.

(6) Every licence issued under *The Medical Act*, being chapter 268 of the Revised Statutes of Ontario, 1970 and in effect immediately before this Part comes into force continues in the same manner as if issued under this Part.

57.—(1) The Complaints Committee shall be composed of two persons who are members of the College;

(b) one member of the Council who was appointed to the Council by a university;

(c) one member of the Council who was appointed to the Council by the Lieutenant Governor in Council.

Idem (2) No person who is a member of the Discipline Committee shall be a member of the Complaints Committee.

Chairman (3) The Council shall name one member of the Complaints Committee to be its Chairman.

Quorum (4) A majority of the members of the Complaints Committee constitutes a quorum.

Duties **58.**—(1) The Complaints Committee shall consider and investigate complaints made by members of the public or members of the College regarding the conduct or actions of any member of the College, but no action shall be taken by the Committee under subsection 2 unless,

(a) a written complaint has been filed with the Registrar and the member whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations he may wish to make concerning the matter; and

(b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

Idem (2) The Committee in accordance with the information it receives may,

(a) direct that the matter be referred, in whole or in part, to the Discipline Committee or to the Executive Committee for the purposes of section 62; or

(b) direct that the matter not be referred under clause *a*; or

(c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Part or the regulations or by-laws.

Decision (3) The Committee shall give its decision in writing to the Registrar for the purposes of section 8.

Discipline Committee **59.**—(1) The Discipline Committee shall be composed of ten members of the Council of whom two shall be persons appointed to the Council by the Lieutenant Governor in Council.

(2) The Council shall appoint one of the members of the Chairman Discipline Committee to be Chairman.

(3) The Chairman of the Discipline Committee may assign ^{Composition of panels} a panel of five members of the Committee to hold a hearing of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

(4) Three members of a panel assigned under subsection 3, ^{Quorum and votes} of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum for a hearing and all disciplinary decisions require the vote of a majority of members presiding at the hearing, but in the event of a tie vote the chairman shall have a second or casting vote.

(5) Notwithstanding section 58, the Council or the Executive Committee may direct the Discipline Committee to hold a ^{Reference by Council or Executive Committee} hearing and determine any specified allegation of professional misconduct or incompetence on the part of a member.

60.—(1) The Discipline Committee shall,

^{Duties of Discipline Committee}

- (a) when so directed by the Council, Executive Committee or Complaints Committee, hear and determine allegations of professional misconduct or incompetence against any member;
- (b) hear and determine matters referred to it under section 58, 59 or 63; and
- (c) perform such other duties as are assigned to it by the Council.

(2) In the case of hearings into allegations of professional ^{Idem} misconduct or incompetence, the Discipline Committee shall,

- (a) consider the allegations, hear the evidence and ascertain the facts of the case;
- (b) determine whether upon the evidence and the facts so ascertained the allegations have been proved;
- (c) determine whether in respect of the allegations so proved the member is guilty of professional misconduct or incompetence;
- (d) determine the penalty to be imposed as hereinafter provided in cases in which it finds the member guilty of professional misconduct or of incompetence.

(3) A member may be found guilty of professional mis-
conduct by the Committee if,

^{Professional misconduct}

(a) he has been found guilty of an offence relevant to his suitability to practise, upon proof of such conviction;

R.S.C. 1970,
cc. N-1,
F-27

(b) if his rights or privileges under the *Narcotic Control Act* (Canada) or the *Food and Drugs Act* (Canada) or the regulations under either of them have been restricted or withdrawn, unless by his own request, upon proof thereof;

(c) he has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.

In-
competence

(4) The Discipline Committee may find a member to be incompetent if in its opinion he has displayed in his professional care of a patient a lack of knowledge, skill or judgment or disregard for the welfare of the patient of a nature or to an extent that demonstrates he is unfit to continue in practice.

Powers of
Discipline
Committee

(5) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence it may by order,

(a) revoke the licence of the member, or withdraw recognition of his specialist status, or both;

(b) suspend the licence of the member or recognition of his specialist status, or both, for a stated period;

(c) impose such restrictions on the licence of the member for such a period and subject to such conditions as the Committee designates;

(d) reprimand the member, and if deemed warranted, direct that the fact of such reprimand be recorded on the register;

(e) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates,

or any combination thereof.

Costs

(6) Where the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee may order that the College reimburse the member for his costs or such portion thereof as the Discipline Committee fixes.

(7) Where the Discipline Committee revokes, suspends or restricts a licence or recognition of specialist status on the grounds of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

(8) Where the Discipline Committee revokes, suspends or restricts the licence or recognition of specialist status of a member on grounds other than for incompetence, the order shall not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned.

(9) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the member.

(10) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his term of office had not expired or been terminated.

61.—(1) The Fitness to Practise Committee shall be composed of twelve persons, of whom at least four shall be members of the Council and eight may be members of the College who are not members of the Council.

(2) The Council shall appoint one of the members of the Fitness to Practise Committee who is a member of the Council to be chairman of the Committee.

(3) The chairman of the Fitness to Practise Committee may assign a panel of three members to hold a hearing, of whom at least one shall be a member who is a member of the Council, and such panel constitutes a quorum of the Committee for a hearing.

(4) All decisions of the Fitness to Practise Committee require the vote of a majority of the members presiding at the hearing.

62.—(1) In this section,

Interpretation

(a) “board of inquiry” means a board of inquiry appointed by the Executive Committee under subsection 2;

(b) "incapacitated member" means a member suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member that he no longer be permitted to practise or that his practice be restricted.

**Reference
to board of
inquiry**

(2) Where the Registrar receives information leading him to believe that a member may be an incapacitated member, he shall make such inquiry as he considers appropriate and report to the Executive Committee who may, upon notice to the member, appoint a board of inquiry composed of at least two members of the College and one member of the Council appointed thereto by the Lieutenant Governor in Council who shall inquire into the matter.

**Examina-
tion**

(3) The board of inquiry shall make such inquiries as it considers appropriate and may require the member to submit to physical or mental examination by such qualified person as the board designates and if the member refuses or fails to submit to such examination the board may order that his licence be suspended until he complies.

**Hearing by
Fitness to
Practise
Committee**

(4) The board of inquiry shall report its findings to the Executive Committee and deliver a copy thereof and a copy of any medical report obtained under subsection 3 to the member about whom the report is made and if, in the opinion of the Executive Committee, the evidence so warrants, the Executive Committee shall refer the matter to the Fitness to Practise Committee to hold a hearing and may suspend the member's licence until the determination of the question of his capacity becomes final.

Parties

(5) The College, the person whose capacity is being investigated and any other person specified by the Fitness to Practise Committee are parties to the hearing.

**Medical
evidence**

(6) A legally qualified medical practitioner is not compellable to produce at the hearing his case histories, notes or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment and such report shall be signed by him and served upon the other parties to the proceedings,

(a) where the evidence is required by the College, at least five days before the hearing commences; and

(b) where the evidence is required by the person about whom the report is made, at least five days before its introduction as evidence,

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

(7) The Fitness to Practise Committee shall, after the hearing,

Powers of
Fitness to
Practise
Committee

- (a) make a finding as to whether or not the member is an incapacitated member; and
- (b) where the member is found to be an incapacitated member, by order,
 - (i) revoke his licence,
 - (ii) suspend his licence for such period as the Committee considers appropriate, or
 - (iii) attach such terms and conditions to the licence as the Committee considers appropriate.

(8) The provisions of Part I and this Part applying to Procedures proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration and appeals therefrom apply, *mutatis mutandis*, to proceedings of the Fitness to Practise Committee under this section, except that the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

63.—(1) A person whose licence has been revoked or suspended for cause under this Part, or under a predecessor of this Part, may apply in writing to the Registrar for the issuance of a licence or removal of the suspension, but such application shall not be made sooner than one year after the revocation or, where the suspension is for a period of more than one year, one year after the suspension.

(2) The Registrar shall refer the application to the Discipline Committee, or, when the revocation or suspension was on the grounds of incapacity, to the Fitness to Practise Committee, which shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Council and to the former member.

(3) The provisions of Part I and this Part applying to Procedures proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration, except

subsection 9 of section 11, apply, *mutatis mutandis*, to proceedings of the Fitness to Practise Committee and Discipline Committee under this section.

Direction
by Council
to issue
licence

(4) Notwithstanding subsections 1, 2 and 3, the Council or the Executive Committee may direct at any time that a licence be issued to a person whose licence has previously been revoked for cause or a suspension for cause be removed, subject to such terms, conditions or limitations as the Council or Executive Committee, as the case may be, considers appropriate.

Investiga-
tion of
members

64.—(1) Where the Registrar believes on reasonable and probable grounds that a member has committed an act of professional misconduct or incompetence the Registrar may, with the approval of the Executive Committee, by order appoint one or more persons to make an investigation to ascertain whether such act has occurred, and the person appointed shall report the result of his investigation to the Registrar.

Powers of
investigator

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the practice of the member in respect of whom the investigation is being made and may upon production of his appointment, enter at any reasonable time the business premises of such person and examine books, records, documents and things relevant to the subject-matter of the investigation and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to such inquiry as if it were an inquiry under that Act.

1971, c. 49

Obstruction
of
investigator

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation.

Search
warrant

(4) Where a provincial judge is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investiga-

tion, the provincial judge may, whether or not an inspection has been made or attempted under subsection 2, issue an order authorizing the person making the investigation, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the provincial judge, by the order, authorizes the person making the investigation to make the search at night.

(5) Any person making an investigation under this section ^{Removal of books, etc.} may, upon giving a receipt therefor, remove any books, records, documents or things examined under subsection 2 or 4 relating to the member whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, records or documents, but such copying shall be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member whose practice is being investigated.

(6) Any copy made as provided in subsection 5 and certified to be a true copy by the person making the investigation ^{Admissibility of copies} is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, record or document and its contents.

(7) The Registrar shall report the results of the investigation to the Council or the Executive Committee or to such other committee as he considers appropriate. ^{Report of Registrar}

65.—(1) Every person employed in the administration of this Part, including any person making an inquiry or investigation under section 64, and any member of the Council or a Committee, shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry or investigation under section 64 and shall not communicate any such matters to any other person except,

(a) as may be required in connection with the administration of this Part and the regulations and by-laws or any proceedings under this Part or the regulations; or

(b) as may be required for the enforcement of *The Health Insurance Act, 1972*, c. 91

(c) to his counsel; or

(d) with the consent of the person to whom the information relates.

Testimony
in civil
suit

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry or investigation except in a proceeding under this Part or the regulations or by-laws.

Restraining
orders

66.—(1) Where it appears to the College that any person does not comply with any provision of this Part or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the College may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

Appeal

(2) An appeal lies to the Supreme Court from an order made under subsection 1.

Penalties

67.—(1) Every person who is in contravention of section 52 is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$2,000 and for each subsequent offence to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both.

Idem

(2) Every person who not being a member uses an occupational designation prescribed by the regulations to be used by members or a like designation is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$1,000 and for each subsequent offence to a fine of not more than \$2,000.

Idem

(3) Any person who obstructs a person appointed to make an investigation under section 64 in the course of his duties is guilty of an offence and on summary conviction is liable to a fine not exceeding \$2,000.

Repeals

68.—(1) *The Medical Act*, being chapter 268 of the Revised Statutes of Ontario, 1970, and *The Medical Amendment Act, 1973*, being chapter 129, are repealed.

References

(2) Any reference in any Act or regulation to *The Medical Act* shall be deemed to be a reference to this Part.

PART IV

NURSING

69.—(1) In this Part,Interpre-
ta-tion

- (a) “by-laws” means the by-laws made under this Part;
- (b) “certificate” means a current certificate issued under this Part authorizing the holder to hold himself out as competent to practise as a registered nurse or registered nursing assistant;
- (c) “College” means the College of Nurses of Ontario;
- (d) “Council” means the Council of the College;
- (e) “Director” means the Director of the College;
- (f) “member” means a member of the College;
- (g) “register” means a register maintained by the Director under this Part, and “registered” and “registration” have corresponding meanings;
- (h) “registered nurse” and “registered nursing assistant” means a person who is the holder of a certificate as a registered nurse or registered nursing assistant, respectively;
- (i) “regulations” means the regulations made under this Part.

(2) The performance of nursing services by a registered nurse or a registered nursing assistant is a health discipline to which this Part applies.

70.—(1) The College of Nurses of Ontario is continued as a body corporate without share capital with power to acquire, hold and dispose of real and personal property for the purposes of this Part.

(2) The objects of the College are,

Objects

- (a) to regulate the practice of nursing and to govern its members in accordance with this Act, the regulations and the by-laws;
- (b) to establish, maintain and develop standards of knowledge and skill among its members;

- (c) to establish, maintain and develop standards of qualification and practice for the practice of nursing;
- (d) to establish, maintain and develop standards of professional ethics among its members;
- (e) to administer this Part and perform such other duties and exercise such other powers as are imposed or conferred on the College by or under any Act;
- (f) such other objects relating to human health care as the Council considers desirable,

in order that the public interest may be served and protected.

**Membership
in the
College**

71.—(1) Every person who is the holder of a certificate is a member of the College subject to any term, condition or limitation to which his certificate is subject.

**Resignation
of member-
ship**

(2) A member may resign his membership by filing with the Director his resignation in writing and his certificate is thereupon cancelled, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

**Cancellation
for default
of fees**

(3) The Director may cancel a certificate for non-payment of any prescribed fee after giving the member at least one month's notice of the default and intention to cancel, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

**Council of
the College**

72.—(1) The Council of the College is continued and shall be the governing body and board of directors of the College and shall manage and administer its affairs.

**Composition
of Council**

- (2) The Council shall be composed of,
- (a) not fewer than eighteen and not more than twenty-five persons, consisting of registered nurses and registered nursing assistants in the proportions determined by the regulations, who are resident or employed in Ontario and are elected by the members in the manner provided by the regulations; and
 - (b) not fewer than six and not more than eight persons who are not members of a Council under this Act or registered or licensed under this Act or any other Act governing a health practice, and who are appointed by the Lieutenant Governor in Council.

**Remunera-
tion of lay
appointees**

(3) The persons appointed under clause *b* of subsection 2 shall be paid out of moneys appropriated therefor by the Legislature such expenses and remuneration as is determined by the Lieutenant Governor in Council.

(4) The appointment of every person appointed under subsection 2 expires at the first regular meeting of the Council following the election of members to Council held next after the effective date of his appointment, and a person whose appointment expires is eligible for reappointment. Expiration of appointment

(5) Every member who is,

Qualifications to vote

(a) resident or employed in Ontario; and

(b) not in default of payment of the annual fee prescribed by the regulations,

is qualified to vote at an election of members of the Council.

(6) The Council shall elect annually a President and Vice-President from among its members. President and Vice-President

(7) The Council shall appoint during pleasure a Director and such other officers as may from time to time be necessary in the opinion of the Council to perform the work of the College and the Director shall be deemed to be the Registrar for the purposes of Part I. Director and staff

(8) The Council shall meet at least twice a year.

Meetings of Council

(9) A majority of the members of the Council constitutes a quorum. Quorum

(10) The members of the Council who were elected under *The Nurses Act*, being chapter 301 of the Revised Statutes of Ontario, 1970 and were in office immediately before this Part comes into force shall continue in office and shall be deemed to be the members referred to in clause *a* of subsection 2 until the expiration of the term for which they were elected or until the office otherwise becomes vacant. Continuation of Council members under R.S.O. 1970, c. 301

73. In addition to his powers and duties under Part I, the Minister may, Powers of Minister

(a) review the activities of the Council;

(b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;

(c) advise the Council with respect to the implementation of this Part and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures.

Regulations

74. Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations,

- (a) fixing the number of members to be elected to the Council, the proportions thereof who shall be registered nurses and registered nursing assistants and establishing the regional and other representation for elections;
- (b) respecting and governing the nomination, election and term of office of the members to be elected to the Council, the filling of vacancies on the Council and controverted elections;
- (c) respecting any matter ancillary to the provisions of this Part with regard to the issuing, renewal, suspension and revocation of certificates;
- (d) providing for the expiration of certificates and governing the requirements and qualifications for the issuing and renewal of certificates;
- (e) providing for the maintenance and inspection of registers;
- (f) governing standards of practice for the profession;
- (g) prohibiting the practice of nursing by members where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
- (h) defining professional misconduct for the purposes of this Part;
- (i) providing for a program for the continuing education of members to maintain their standard of competence and requiring members to participate in such continuing education;
- (j) respecting the reporting and publication of decisions in disciplinary matters;
- (k) providing for the compilation of statistical information on the supply, distribution and professional activities of members and requiring members to provide the information necessary to compile such statistics;
- (l) respecting the duties and authority of the Director;
- (m) requiring the payment of annual fees by members and fees for certification and examinations, and prescribing the amounts thereof;

- (n) prescribing forms and providing for their use;
- (o) providing for the exemption of any member from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable.

75.—(1) The Council may pass by-laws relating to the By-laws administrative and domestic affairs of the College not inconsistent with this Act and the regulations and without limiting the generality of the foregoing,

- (a) prescribing the seal of the College;
- (b) providing for the execution of documents by the College;
- (c) respecting banking and finance;
- (d) fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;
- (e) providing procedures for the election of President and Vice-President of the College, the filling of a vacancy in those offices, and prescribing the duties of the President and Vice-President;
- (f) respecting the calling, holding and conducting of meetings of the Council and the duties of members of Council;
- (g) respecting the calling, holding and conducting of meetings of the membership of the College;
- (h) prescribing the remuneration of the members of the Council and committees other than persons appointed by the Lieutenant Governor in Council and providing for the payment of necessary expenses of the Council and committees in the conduct of their business;
- (i) providing for the appointment, composition, powers and duties of such additional or special committees as may be required;
- (j) delegating to the Executive Committee such powers and duties of the Council as are set out in the by-law, other than the power to make, amend or revoke regulations and by-laws;
- (k) providing for a code of ethics;
- (l) prescribing forms and providing for their use;

- (m) providing procedures for the making, amending and revoking of the by-laws;
- (n) respecting management of the property of the College;
- (o) respecting the application of the funds of the College and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;
- (p) providing for the entering into arrangements by the College for its members respecting indemnity for professional liability and respecting the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members and exempting members or any class thereof from all or part of any such levy;
- (q) respecting membership of the College in a national organization with similar functions, the payment of an annual assessment and provision for representatives at meetings;
- (r) respecting all of the things that are considered necessary for the attainment of the objects of the College and the efficient conduct of its affairs.

Distribution
of by-laws

- (2) A copy of the by-laws made under subsection 1 and amendments thereto,
- (a) shall be forwarded to the Minister;
 - (b) shall be forwarded to each member; and
 - (c) shall be available for public inspection in the office of the College.

Use of
titles

76.—(1) No person shall hold himself out as competent to practise as a registered nurse or as a registered nursing assistant or otherwise as the holder of a certificate under this Part unless such person is the holder of the appropriate certificate under this Part.

Idem

(2) No person shall use the title “registered nurse” or the designation “Reg.N.” or “R.N.” or other designation representing the title unless such person is the holder of a certificate as a registered nurse under this Part.

Idem

(3) No person shall use the title “registered nursing assistant” or the designation “R.N.A.” or other designation representing the title unless such person is the holder of a certificate as a registered nursing assistant under this Part.

Establish-
ment of
committees

77.—(1) The Council shall establish and appoint as herein-after provided the following committees,

- (a) Executive Committee;
- (b) Registration Committee;

(c) Complaints Committee;

(d) Discipline Committee,

and the appointments thereto shall include representation of both registered nurses and registered nursing assistants.

(2) The Council may establish such other committees as the Other Committees Council from time to time considers necessary.

(3) Where one or more vacancies occur in the membership Vacancies of the Council or any committee, the members remaining in office constitute the Council or committee so long as their number is not fewer than the prescribed quorum.

78.—(1) The Executive Committee shall be composed of, Executive Committee

(a) the President, who shall be chairman of the Committee;

(b) the Vice-President; and

(c) three persons who are members of the Council, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

(2) The Executive Committee shall perform such functions Duties of the Council as are delegated to it by the Council, the by-laws or this Part and, subject to ratification by the Council at its next ensuing meeting, may take action upon any other matter that requires immediate attention between meetings of the Council, other than to make, amend or revoke a regulation or by-law.

(3) A majority of the members of the Executive Committee Quorum constitutes a quorum.

79.—(1) The Registration Committee shall be composed Registration Committee of nine persons who are members of the Council, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

(2) The Council shall name one member of the Registration Chairman Committee to be Chairman.

(3) A majority of the members of the Registration Com- Quorum mittee constitutes a quorum.

(4) The Registration Committee shall submit an annual Reports report of its activities to the Council and may make such other reports to the Council and Executive Committee as it considers appropriate.

Issuance of certificates

80.—(1) The Director shall issue a certificate or renewal thereof to any applicant therefor who is qualified under this Part and the regulations and has passed such examinations as the Council may set or approve, and the Director shall refer to the Registration Committee every application for a certificate or renewal thereof that he proposes to refuse or to which he considers terms, conditions or limitations should be attached.

Powers and duties of Registration Committee

- (2) The Registration Committee,
 - (a) shall determine the eligibility of applicants for certificates or renewals thereof and may require an applicant to take and pass such additional examinations as the Council may set or approve and pay such fees therefor as the Registration Committee fixes or to take such additional training as the Registration Committee specifies; and
 - (b) may exempt an applicant from any requirement for certification.

Conditions of certificates

- (3) The Registration Committee may direct the Director to issue or refuse to issue certificates and renewals or to issue certificates and renewals subject to such terms, conditions and limitations as the Committee specifies.

Refusal to renew

- (4) For the purposes of Part I, a refusal to renew a certificate shall be deemed to be a refusal to grant the certificate.

Review of qualifications

- (5) The Registration Committee may review the qualifications of any member and may impose a further term, condition or limitation on his certificate pending the demonstration of such standard of competence through the completion of such experience, courses of study or continuing education as the Committee specifies.

Registers

- (6) The Director shall maintain one or more registers in which is entered every person to whom a certificate has been issued identifying the terms, conditions and limitations attached to the certificate or the registration and every revocation, suspension, cancellation and expiration or other termination and every renewal of the certificate and such other information as the Registration Committee or Discipline Committee directs.

Continuance of registration under R.S.O. 1970, c. 301

- (7) Every person who was registered as a registered nurse or a registered nursing assistant under *The Nurses Act* being chapter 301 of the Revised Statutes of Ontario, 1970, immediately before this Part comes into force shall be deemed to be the holder of a certificate under this Part until it expires or is revoked, suspended or cancelled under this Part.

Complaints Committee

- 81.**—(1) The Complaints Committee shall be composed of five persons who are members of the Council, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

(2) No person who is a member of the Discipline Committee shall be a member of the Complaints Committee. Membership in other Committees

(3) The Council shall name one member of the Complaints Committee to be its Chairman.

(4) Three members of the Complaints Committee constitute Quorum a quorum.

82.—(1) The Complaints Committee shall consider and Duties investigate complaints made by members of the public or members of the College regarding the conduct or actions of any member of the College, but no action shall be taken by the Committee under subsection 2 unless,

- (a) a written complaint has been filed with the Director and the member whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations he may wish to make concerning the matter; and
- (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

(2) The Committee in accordance with the information it Idem receives may,

- (a) direct that the matter be referred, in whole or in part, to the Discipline Committee or to the Executive Committee for the purposes of section 85; or
- (b) direct that the matter not be referred under clause *a*; or
- (c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Part or the regulations or by-laws.

(3) The Committee shall give its decision in writing to the Decision Director for the purposes of section 8.

83.—(1) The Discipline Committee shall be composed of Discipline Committee ten persons who are members of the Council, of whom two shall be persons appointed to the Council by the Lieutenant Governor in Council.

(2) Five or more members of the Discipline Committee, Quorum and votes of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum, and all disciplinary decisions require the vote of a majority of the members present at the meeting.

Chairman (3) The Council shall name one member of the Discipline Committee to be its chairman.

Reference by Council or Executive Committee (4) Notwithstanding section 82, the Council or the Executive Committee may direct the Discipline Committee to hold a hearing and determine any specified allegation of professional misconduct or incompetence on the part of a member.

Duties of Discipline Committee **84.**—(1) The Discipline Committee shall,

- (a) when so directed by the Council, Executive Committee or Complaints Committee, hear and determine allegations of professional misconduct or incompetence against any member;
- (b) hear and determine matters referred to it under section 82, 83 or 86; and
- (c) perform such other duties as are assigned to it by the Council.

Idem (2) In the case of hearings into allegations of professional misconduct or incompetence, the Discipline Committee shall,

- (a) consider the allegations, hear the evidence and ascertain the facts of the case;
- (b) determine whether upon the evidence and the facts so ascertained the allegations have been proved;
- (c) determine whether in respect of the allegations so proved the member is guilty of professional misconduct or incompetence;
- (d) determine the penalty to be imposed as hereinafter provided in cases in which it finds the member guilty of professional misconduct or of incompetence.

Professional misconduct (3) A member may be found guilty of professional misconduct by the Committee if,

- (a) he has been found guilty of an offence relevant to his suitability to practise, upon proof of such conviction;
- (b) he is in contravention of subsection 1 of section 76; or
- (c) he has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.

(4) The Discipline Committee may find a member to be ^{Incompetence} incompetent if in its opinion he has displayed in his professional care of a patient a lack of knowledge, skill or judgment or disregard for the welfare of the patient of a nature or to an extent that demonstrates he is unfit to continue in practice.

(5) Where the Discipline Committee finds a member guilty of ^{Powers of} ^{Discipline} ^{Committee} professional misconduct or incompetence it may by order,

- (a) revoke the certificate of the member;
- (b) suspend the certificate of the member for a stated period;
- (c) impose such restrictions on the certificate of the member for such a period and subject to such conditions as the Committee designates;
- (d) reprimand the member, and if deemed warranted, direct that the fact of such reprimand be recorded on the register;
- (e) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates,

or any combination thereof.

(6) Where the Discipline Committee is of the opinion that ^{Costs} the commencement of the proceedings was unwarranted, the Committee may order that the College reimburse the member for his costs or such portion thereof as the Discipline Committee fixes.

(7) Where a certificate is suspended or restricted for a ^{Expiration} ^{of suspended} ^{or restricted} period under subsection 5, the suspension or restriction applies ^{certificate} in respect of any renewal or right to renewal of the certificate for the duration of the period.

(8) Where the Discipline Committee revokes, suspends or ^{Stay on} ^{appeal for} ^{incompetence} restricts a certificate on the grounds of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

(9) Where the Discipline Committee revokes, suspends or ^{Stay on} ^{appeal for} ^{professional} ^{misconduct} restricts the certificate of a member on grounds other than incompetence, the order shall not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned.

(10) Where the Discipline Committee finds a member guilty ^{Service of} ^{decision of} ^{Discipline} ^{Committee} of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the member.

Continuation
on expiry of
Committee
membership

(11) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his term of office had not expired or been terminated.

Interpre-
tation

85.—(1) In this section,

- (a) “board of inquiry” means a board of inquiry appointed by the Executive Committee under subsection 2;
- (b) “incapacitated member” means a member suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member that he no longer be permitted to practise or that his practice be restricted.

Reference
to board of
inquiry

(2) Where the Director receives information leading him to believe that a member may be an incapacitated member, he shall make such inquiry as he considers appropriate and report to the Executive Committee who may, upon notice to the member, appoint a board of inquiry composed of at least two members of the College and one member of the Council appointed thereto by the Lieutenant Governor in Council who shall inquire into the matter.

Examination

(3) The board of inquiry shall make such inquiries as it considers appropriate and may require the member to submit to physical or mental examination by such qualified person as the board designates and if the member refuses or fails to submit to such examination the board may order that his certificate be suspended until he complies.

Hearing by
Registration
Committee

(4) The board of inquiry shall report its findings to the Executive Committee and deliver a copy thereof and a copy of any medical report obtained under subsection 3 to the member about whom the report is made and if, in the opinion of the Executive Committee, the evidence so warrants, the Executive Committee shall refer the matter to the Registration Committee to hold a hearing and may suspend the member's certificate until the determination of the question of his capacity becomes final.

Parties

(5) The board of inquiry, the person whose capacity is being investigated and any other person specified by the Registration Committee are parties to the hearing.

Medical
evidence

(6) A legally qualified medical practitioner is not compellable to produce at the hearing his case histories, notes or any other records constituting medical evidence but,

when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment and such report shall be signed by him and served upon the other parties to the proceedings,

- (a) where the evidence is required by the College, at least five days before the hearing commences; and
- (b) where the evidence is required by the person about whom the report is made, at least five days before its introduction as evidence,

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

(7) The Registration Committee shall, after the hearing, Powers of
Registration
Committee

- (a) make a finding as to whether or not the member is an incapacitated member; and
- (b) where the member is found to be an incapacitated member, by order,
 - (i) revoke his certificate,
 - (ii) suspend his certificate for such period as the Committee considers appropriate, or
 - (iii) attach such terms and conditions to the certificate as the Committee considers appropriate.

(8) The provisions of Part I and this Part applying to Procedures proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration and appeals therefrom apply, *mutatis mutandis*, to proceedings of the Registration Committee under this section, except that the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

86.—(1) A person whose certificate has been revoked or suspended for cause under this Part, or registration has been suspended or cancelled for cause under a predecessor of this Part, may apply in writing to the Director for the issuance of a certificate or removal of the suspension, but such application shall not be made sooner than one year after the revocation or cancellation, or where the suspension is for more than one year, one year after the suspension. Restoration
of regis-
stration or
certificate

(2) The Director shall refer the application to the Discipline Committee, or where the revocation or suspension was on the grounds of incapacity, to the Registration Committee, which Reference to
Discipline
Committee

shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Council and to the former member.

Procedures

(3) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration, except subsection 9 of section 11, apply, *mutatis mutandis*, to proceedings of the Registration Committee and Discipline Committee under this section.

Duties of employers of registered nurses

87. Every person, other than a patient, who employs a person as a registered nurse or registered nursing assistant and every agency or registry that procures employment for a person as a registered nurse or registered nursing assistant,

- (a) shall ensure that such person is the holder of an appropriate certificate under this Part; and
- (b) shall report to the College any termination of such employment for reasons purporting to constitute professional misconduct, incompetence or incapacity.

Restraining orders

88.—(1) Where it appears to the College that any person does not comply with any provision of this Part or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the College may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

Appeal

(2) An appeal lies to the Supreme Court from an order made under subsection 1.

Penalties

89.—(1) Every person who is in contravention of section 76 is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$2,000 and for each subsequent offence to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both.

Idem

(2) Every person who is in contravention of section 87 is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$1,000 and for each subsequent offence to a fine of not more than \$2,000.

Repeals

90.—(1) *The Nurses Act*, being chapter 301 of the Revised Statutes of Ontario, 1970 and *The Nurses Amendment Act*, 1973, being chapter 30, are repealed.

References

(2) Any reference in any Act or regulation to *The Nurses Act* shall be deemed to be a reference to this Part.

PART V

OPTOMETRY

91.—(1) In this Part,Interpre-
tation

- (a) "by-laws" means the by-laws made under this Part;
 - (b) "College" means the College of Optometrists of Ontario;
 - (c) "Council" means the Council of the College;
 - (d) "licence" means a licence for the practice of optometry issued under this Part;
 - (e) "member" means a member of the College;
 - (f) "practice of optometry" means the services usually performed by an optometrist, including the measurement and assessment of vision, other than by the use of drugs, except such drugs for such purposes as are prescribed by the regulations, the prescribing and dispensing of ophthalmic appliances, and prescribing and providing orthoptics for the relief or correction of any visual or muscular error or defect of the eye;
 - (g) "Registrar" means the Registrar of the College;
 - (h) "regulations" means the regulations made under this Part.
- (2) The practice of optometry is a health discipline to which ^{Health discipline} this Part applies.

92.—(1) The College of Optometrists of Ontario is continued as a body corporate without share capital with power to acquire, hold and dispose of real and personal property for the purposes of this Part.

(2) The objects of the College are,

Objects

- (a) to regulate the practice of optometry and to govern its members in accordance with this Act, the regulations and the by-laws;
- (b) to establish, maintain and develop standards of knowledge and skill among its members;
- (c) to establish, maintain and develop standards of qualification and practice for the practice of optometry;

College of
Optometrists
of Ontario
continued

- (d) to establish, maintain and develop standards of professional ethics among its members;
- (e) to administer this Part and perform such other duties and exercise such other powers as are imposed or conferred on the College by or under any Act,

in order that the public interest may be served and protected.

**Membership
in the
College**

93.—(1) Every person licensed by the College is a member of the College subject to any term, condition or limitation to which the licence is subject.

**Resignation of
membership**

(2) A member may resign his membership by filing with the Registrar his resignation in writing and his licence is thereupon cancelled, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

**Cancellation
for default
of fees**

(3) The Registrar may cancel a licence for non-payment of any prescribed fee after giving the member at least two months notice of the default and intention to cancel, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

**Council of
the College**

94.—(1) The Board of Directors of the College is continued as the Council of the College which shall be the governing body and board of directors of the College and shall manage and administer its affairs.

**Composition
of Council**

(2) The Council shall be composed of,

- (a) one person who is appointed by the University of Waterloo from the faculty of the School of Optometry;
- (b) two persons who are not members of a Council under this Act or registered or licensed under this Act or any other Act governing a health practice and are appointed by the Lieutenant Governor in Council; and
- (c) five persons who are members and are elected by the members in the manner provided by the regulations.

**Remuneration
of lay
appointees**

(3) The persons appointed under clause *b* of subsection 2 shall be paid out of moneys appropriated therefor by the Legislature such expenses and remuneration as is determined by the Lieutenant Governor in Council.

(4) The appointment of every person appointed under subsection 2 shall be for a term not exceeding three years, and a person whose appointment expires is eligible for re-appointment.

(5) Every member who is,

Qualifications
to vote

(a) resident in Ontario; and

(b) not in default of payment of the annual fee prescribed by the regulations,

is qualified to vote at an election of members of the Council.

(6) The Council shall elect annually a President and Vice-President from among its members.

President
and Vice-
President

(7) The Council shall appoint during pleasure a Registrar, Treasurer, Secretary and such other officers and servants as may from time to time be necessary in the opinion of the Council to perform the work of the College.

Registrar,
Treasurer,
Secretary
and staff

(8) A majority of the members of the Council constitutes Quorum a quorum.

(9) The members of the Council who were elected under *The Optometry Act*, being chapter 335 of the Revised Statutes of Ontario, 1970 and were in office immediately before this Part comes into force shall continue in office and shall be deemed to be the members referred to in clause *a* of subsection 2 until the expiration of the term for which they were elected or until the office otherwise becomes vacant.

Continuation
of Council
members
under
R.S.O. 1970,
c. 335

95. In addition to his powers and duties under Part I, the Minister may,

(a) review the activities of the Council;

(b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;

(c) advise the Council with respect to the implementation of this Part and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures.

96. Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations.

Regulations

- (a) establishing electoral districts for the purposes of the election of members to the Council and respecting and governing the qualifications, nomination, election and term of office of the members to be elected, and controverted elections;
- (b) prescribing the conditions disqualifying elected members from sitting on the Council and governing the filling of vacancies on the Council;
- (c) respecting any matter ancillary to the provisions of this Part with regard to the issuing, suspension and revocation of licences;
- (d) prescribing classes of licences and governing the requirements and qualifications for the issuing of licences or any class thereof and prescribing the terms and conditions thereof;
- (e) providing for the maintenance and inspection of registers of persons permitted to practise;
- (f) governing standards of practice for the profession;
- (g) prescribing drugs that may be used in the practice of optometry for such purposes as are specified;
- (h) providing for the designation of life members of the College and prescribing their rights and privileges;
- (i) authorizing persons other than members to perform specified acts in the practice of optometry under the supervision or direction of a member;
- (j) prohibiting the practice of optometry where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
- (k) defining professional misconduct for the purposes of this Part;
- (l) providing for a program of continuing education of members to maintain their standard of competence and requiring members to participate in such continuing education;
- (m) providing for the establishment and operation of an appraisal committee for the purposes of examining and assessing the standard of practice in the profession and reporting thereon to the Council and examining and assessing the standards of practice, qualifications and continuing education of members and making recommendations to the Registration Committee thereon;

- (n) regulating, controlling and prohibiting the use of terms, titles or designations by members or groups or associations of members in respect of their practices;
- (o) respecting the reporting and publication of decisions in disciplinary matters;
- (p) providing for the compilation of statistical information on the supply, distribution and professional activities of members and requiring members to provide the information necessary to compile such statistics;
- (q) respecting the duties and authority of the Registrar;
- (r) requiring and providing for the inspection and examination of the office, records and equipment of members in connection with their practice;
- (s) prescribing the records that shall be kept respecting patients;
- (t) requiring the payment of annual fees by members and fees for licensing, examinations and continuing education, including penalties for late payment, and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof;
- (u) prescribing forms and providing for their use;
- (v) providing for the exemption of any member from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable.

97.—(1) The Council may pass by-laws relating to the By-laws administrative and domestic affairs of the College not inconsistent with this Act and the regulations and without limiting the generality of the foregoing,

- (a) prescribing the seal of the College;
- (b) providing for the execution of documents by the College;
- (c) respecting banking and finance;
- (d) fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;

- (e) providing procedures for the election of President and Vice-President of the College, the filling of a vacancy in those offices, and prescribing the duties of the President and Vice-President;
- (f) respecting the calling, holding and conducting of meetings of the Council and the duties of members of Council;
- (g) respecting the calling, holding and conducting of meetings of the membership of the College;
- (h) prescribing the remuneration of the members of the Council and committees other than persons appointed by the Lieutenant Governor in Council and providing for the payment of necessary expenses of the Council and committees in the conduct of their business;
- (i) providing for the appointment, composition, powers and duties of such additional or special committees as may be required;
- (j) delegating to the Executive Committee such powers and duties of the Council as are set out in the by-law, other than the power to make, amend or revoke regulations and by-laws;
- (k) providing for a code of ethics;
- (l) prescribing forms and providing for their use;
- (m) providing procedures for the making, amending and revoking of the by-laws;
- (n) respecting management of the property of the College;
- (o) respecting the application of the funds of the College and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;
- (p) providing for the entering into arrangements by the College for its members respecting indemnity for professional liability and respecting the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members and exempting members or any class thereof from all or part of any such levy;
- (q) respecting membership of the College in a national organization with similar functions, the payment of an annual assessment and provision for representatives at meetings;

(r) providing for the appointment of inspectors for the purposes of this Part;

(s) respecting all of the things that are considered necessary for the attainment of the objects of the College and the efficient conduct of its affairs.

(2) A by-law is effective when it is passed by the Council Confirmation of by-laws but expires with the close of the next annual meeting of members of the College held after its passing, unless it is confirmed by the meeting.

(3) A copy of the by-laws made under subsection 1 and Distribution of by-laws amendments thereto,

(a) shall be forwarded to the Minister;

(b) shall be forwarded to each member; and

(c) shall be available for public inspection in the office of the College.

98.—(1) No person shall engage in or hold himself out as Licence to practise engaging in the practice of optometry unless he is licensed under this Part.

(2) Subsection 1 does not apply to,

Exceptions

(a) a student enrolled in the School of Optometry at the University of Waterloo who practices optometry as required by the curriculum under the supervision of a member of the faculty or a member of the College;

(b) an applicant for a licence under this Part who practises optometry under the personal supervision of a member of the College for the purpose of completing qualifying studies or clinical experience required under this Part.

(3) For the purposes of subsection 1, proof of the performance of one act in the practice of optometry on one occasion is sufficient to establish engaging in the practice of optometry.

(4) A licence shall be deemed to authorize a member to Conflict with other health engage in the practice of optometry, notwithstanding that discipline any part of such practice is included in the practice of any other health discipline.

99. No member shall use drugs in his practice, except Use of certain drugs such drugs for such purposes as are prescribed by the regulations prohibited.

Establishment of committees

100.—(1) The Council shall establish and appoint as hereinafter provided the following committees,

- (a) Executive Committee;
- (b) Registration Committee;
- (c) Complaints Committee;
- (d) Discipline Committee,

and may establish such other committees as the Council from time to time considers necessary.

Vacancies

(2) Where one or more vacancies occur in the membership of the Council or any committee, the members remaining in office constitute the Council or committee so long as their number is not fewer than the prescribed quorum.

Executive Committee

101.—(1) The Executive Committee shall be composed of three persons who are members of the Council of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

Quorum

(2) Two members of the Executive Committee constitute a quorum.

Duties

(3) The Executive Committee shall perform such functions of the Council as are delegated to it by the Council, the by-laws or this Part and, subject to ratification by the Council at its next ensuing meeting, may take action upon any other matter that requires immediate attention between meetings of the Council, other than to make, amend or revoke a regulation or by-law.

Registration Committee

102.—(1) The Registration Committee shall be composed of,

- (a) two members of the Council of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council; and
- (b) two members of the College of whom one shall be a member of the faculty of the School of Optometry of the University of Waterloo.

Chairman

(2) The Council shall name one member of the Registration Committee to be chairman.

Quorum

(3) A majority of the members of the Registration Committee constitutes a quorum.

Issuance of licences

103.—(1) The Registrar shall issue a licence to any applicant therefor who is qualified under this Part and the regula-

tions and has passed such examinations as the Council may set or approve, and the Registrar shall refer to the Registration Committee every application for a licence that he proposes to refuse or to which he considers terms, conditions or limitations should be attached.

(2) The Registration Committee,

Powers and
duties of
Registration
Committee

- (a) shall determine the eligibility of applicants for licences and may require an applicant to take and pass such additional examinations as the Council may set or approve and pay such fees therefor as the Registration Committee fixes or to take such additional training as the Registration Committee specifies; and
- (b) may exempt an applicant from any licensing requirement.

(3) The Registration Committee may direct the Registrar ^{Idem} to issue or refuse to issue licences or to issue licences subject to such terms, conditions and limitations as the Committee specifies.

(4) The Registration Committee may review the qualifications of any member and may impose a term, condition or limitation on his licence pending the demonstration of such standard of competence through the completion of such experience, courses of study or continuing education as the Committee specifies.

(5) The Registrar shall maintain one or more registers in ^{Registers of} _{licensurees} which is entered every person who is licensed to practise optometry, identifying the terms, conditions and limitations attached to the licence, and shall note on the register every revocation, suspension and cancellation of a licence and such other information as the Registration Committee or Discipline Committee directs.

(6) Every person who was registered as an optometrist ^{Continuance of registration under R.S.O. 1970, c. 335} under *The Optometry Act*, being chapter 335 of the Revised Statutes of Ontario, 1970, immediately before this Part comes into force shall be deemed to be the holder of a licence under this Part for the unexpired portion of the term of the registration, unless sooner revoked, suspended or cancelled under this Part.

104.—(1) The Complaints Committee shall be composed of, ^{Complaints Committee}

- (a) three persons who are members of the College;
- (b) two persons who are members of the Council one of whom was appointed to the Council by the Lieutenant Governor in Council.

- Idem** (2) No person who is a member of the Discipline Committee shall be a member of the Complaints Committee.
- Chairman** (3) The Council shall name one member of the Complaints Committee to be its Chairman.
- Quorum** (4) Three members of the Complaints Committee constitute a quorum.
- Duties** **105.**—(1) The Complaints Committee shall consider and investigate complaints made by members of the public or members of the College regarding the conduct or actions of any member of the College, but no action shall be taken by the Committee under subsection 2 unless,
- (a) a written complaint has been filed with the Registrar and the member whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations he may wish to make concerning the matter; and
 - (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.
- Idem** (2) The Committee in accordance with the information it receives may,
- (a) direct that the matter be referred, in whole or in part, to the Discipline Committee or to the Executive Committee for the purposes of section 108; or
 - (b) direct that the matter not be referred under clause *a*; or
 - (c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Part or the regulations or by-laws.
- Decision** (3) The Committee shall give its decision in writing to the Registrar for the purposes of section 8.
- Discipline Committee** **106.**—(1) The Discipline Committee shall be composed of,
- (a) three persons who are members of the College;
 - (b) two persons who are members of the Council, one of whom was appointed to the Council by the Lieutenant Governor in Council.
- Quorum and votes** (2) Three or more members of the Discipline Committee, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum, and

all disciplinary decisions require the vote of a majority of the members present at the meeting.

(3) The Council shall name one member of the Discipline Committee to be its chairman.

(4) Notwithstanding section 105, the Council or the Executive Committee may direct the Discipline Committee to hold a hearing and determine any specified allegation of professional misconduct or incompetence on the part of a member.

107.—(1) The Discipline Committee shall,

Duties of
Discipline
Committee

- (a) when so directed by the Council, Executive Committee or Complaints Committee, hear and determine allegations of professional misconduct or incompetence against any member;
- (b) hear and determine matters referred to it under sections 105, 106 or 109; and
- (c) perform such other duties as are assigned to it by the Council.

(2) In the case of hearings into allegations of professional misconduct or incompetence, the Discipline Committee shall,

- (a) consider the allegations, hear the evidence and ascertain the facts of the case;
- (b) determine whether upon the evidence and the facts so ascertained the allegations have been proved;
- (c) determine whether in respect of the allegations so proved the member is guilty of professional misconduct or incompetence;
- (d) determine the penalty to be imposed as hereinafter provided in cases in which it finds the member guilty of professional misconduct or of incompetence.

(3) A member may be found guilty of professional misconduct by the Committee if,

- (a) he has been found guilty of an offence relevant to his suitability to practise, upon proof of such conviction;
- (b) he is in contravention of section 99; or
- (c) he has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.

Incompetence (4) The Discipline Committee may find a member to be incompetent if in its opinion he has displayed in his professional care of a patient a lack of knowledge, skill or judgment or disregard for the welfare of the patient of a nature or to an extent that demonstrates he is unfit to continue in practice.

Powers of Discipline Committee (5) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence it may by order,

- (a) revoke the licence of the member;
- (b) suspend the licence of the member for a stated period;
- (c) impose such restrictions on the licence of the member for such a period and subject to such conditions as the Committee designates;
- (d) reprimand the member, and if deemed warranted, direct that the fact of such reprimand be recorded on the register;
- (e) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates,

or any combination thereof.

Costs

(6) Where the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee may order that the College reimburse the member for his costs or such portion thereof as the Discipline Committee fixes.

Stay on appeal for incompetence

(7) Where the Discipline Committee revokes, suspends or restricts a licence on the grounds of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

Stay on appeal for professional misconduct

(8) Where the Discipline Committee revokes, suspends or restricts the licence of a member on grounds other than for incompetence, the order shall not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned.

Service of decision of Discipline Committee

(9) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the member.

(10) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his term of office had not expired or been terminated.

108.—(1) In this section,

Interpre-
tation

- (a) "board of inquiry" means a board of inquiry appointed by the Executive Committee under subsection 2;
- (b) "incapacitated member" means a member suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member that he no longer be permitted to practise or that his practice be restricted.

(2) Where the Registrar receives information leading him to believe that a member may be an incapacitated member, he shall make such inquiry as he considers appropriate and report to the Executive Committee who may, upon notice to the member, appoint a board of inquiry composed of at least two members of the College and one member of the Council appointed thereto by the Lieutenant Governor in Council who shall inquire into the matter.

(3) The board of inquiry shall make such inquiries as it considers appropriate and may require the member to submit to physical or mental examination by such qualified person as the board designates and if the member refuses or fails to submit to such examination the board may order that his licence be suspended until he complies.

(4) The board of inquiry shall report its findings to the Executive Committee and deliver a copy thereof and a copy of any medical report obtained under subsection 3 to the member about whom the report is made and if, in the opinion of the Executive Committee, the evidence so warrants, the Executive Committee shall refer the matter to the Registration Committee to hold a hearing and may suspend the member's licence until the determination of the question of his capacity becomes final.

(5) The College, the person whose capacity is being investigated and any other person specified by the Registration Committee are parties to the hearing.

Medical evidence

(6) A legally qualified medical practitioner is not compellable to produce at the hearing his case histories, notes or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment and such report shall be signed by him and served upon the other parties to the proceedings,

- (a) where the evidence is required by the College, at least five days before the hearing commences; and
- (b) where the evidence is required by the person about whom the report is made, at least five days before its introduction as evidence,

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

Powers of Registration Committee

- (7) The Registration Committee shall, after the hearing,
 - (a) make a finding as to whether or not the member is an incapacitated member; and
 - (b) where the member is found to be an incapacitated member, by order,
 - (i) revoke his licence,
 - (ii) suspend his licence for such period as the Committee considers appropriate, or
 - (iii) attach such terms and conditions to the licence as the Committee considers appropriate.

Procedures

(8) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration and appeals therefrom apply, *mutatis mutandis*, to proceedings of the Registration Committee under this section, except that the decision takes effect immediately notwithstanding that an appeal is taken from the order.

Restoration of licence

109.—(1) A person whose licence has been revoked or suspended for cause under this Part, or registration has been suspended or cancelled for cause under a predecessor of this

Part, may apply in writing to the Registrar for the issuance of a licence or removal of the suspension, but such application shall not be made sooner than one year after the revocation or cancellation or, where the suspension is for more than one year, one year after the suspension.

(2) The Registrar shall refer the application to the Discipline Committee, or where the revocation or suspension was on the grounds of incapacity to the Registration Committee, which shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Council and to the former member.

(3) The provisions of Part I and this Part applying to procedures of the Health Disciplines Board on hearings and review in respect of applications for registration, except subsection 9 of section 11 apply, *mutatis mutandis*, to proceedings of the Registration Committee and Discipline Committee under this section.

110.—(1) Where the Registrar believes on reasonable and probable grounds that a member has committed an act of professional misconduct or incompetence, the Registrar may by order appoint one or more persons to make an investigation to ascertain whether such an act has occurred, and the person appointed shall report the result of his investigation to the Registrar.

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the practice of the member in respect of whom the investigation is being made and may, upon production of his appointment, enter at any reasonable time the business premises of such person and examine books, records, documents and things relevant to the subject-matter of the investigation, and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to such inquiry as if it were an inquiry under that Act.

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation.

(4) Where a provincial judge is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such

person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the provincial judge may, whether or not an inspection has been made or attempted under subsection 2, issue an order authorizing the person making the investigation, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the provincial judge, by the order, authorizes the person making the investigation to make the search at night.

Removal of
books, etc.

(5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, records, documents or things examined under subsection 2 or 4 relating to the member whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, records or documents, but such copying shall be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member whose practice is being investigated.

Admissibility
of copies

(6) Any copy made as provided in subsection 5 and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, record or document and its contents.

Report of
Registrar

(7) The Registrar shall report the results of the investigation to the Council or the Executive Committee or to such other committee as he considers appropriate.

Matters
confidential

111.—(1) Every person employed in the administration of this Part, including any person making an inquiry or investigation under section 110 and any member of the Council or a Committee shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry or investigation under section 110 and shall not communicate any such matters to any other person except,

(a) as may be required in connection with the administration of this Part and the regulations and by-laws or any proceedings under this Part or the regulations;

- (b) as may be required for the enforcement of *The Health Insurance Act, 1972*;
- (c) to his counsel; or
- (d) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required ^{Testimony in civil suit} to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry or investigation except in a proceeding under this Part or the regulations or by-laws.

112.—(1) Where it appears to the College that any person ^{Restraining orders} does not comply with any provision of this Part or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the College may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

(2) An appeal lies to the Supreme Court from an order made ^{Appeal} under subsection 1.

113.—(1) Nothing in this Part applies to the practice of ^{Exemption under R.S.O. 1970, c. 334} ophthalmic dispensing by an ophthalmic dispenser registered under *The Ophthalmic Dispensers Act*.

(2) Nothing in this Part prevents,

^{Retail merchants}

(a) a retail merchant from operating, as part of his business, an optical department at his place of business where the practice of optometry is carried on,

(i) if the practice and the department are in charge of a licensed optometrist or a legally qualified medical practitioner, and

(ii) if the retail merchant files with the College annually the name and address of the owner or manager of the business, either of whom shall be a resident of Ontario, and the name of the optometrist or legally qualified medical practitioner in charge of the optical department;

- (b) the sale of protective glasses for industrial purposes, coloured glasses not embodying any ophthalmic lens, goggles or simple magnifying glasses not sold or devised for the relief or correction of any visual or muscular error or defect of the eye; or
- (c) the sale or offering for sale by a retail merchant at his place of business of spectacles or eyeglasses,

but the Lieutenant Governor in Council may make regulations governing or restricting the sale or offering for sale referred to in clause c and prescribing the terms and conditions thereof and designating the nature and kind of spectacles and eye-glasses that may be sold under this subsection.

Penalties

114.—(1) Every person who is in contravention of section 98 is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$2,000 and for each subsequent offence to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both.

Idem

(2) Every person who, not being a member, uses an occupational designation prescribed by the regulations to be used by members or a like designation is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$1,000 and for each subsequent offence to a fine of not more than \$2,000.

Idem

(3) Any person who obstructs a person appointed to make an investigation under section 110 in the course of his duties is guilty of an offence and on summary conviction is liable to a fine not exceeding \$2,000.

**Act,
repealed**

115.—(1) *The Optometry Act*, being chapter 335 of the Revised Statutes of Ontario, 1970, is repealed.

References

(2) Any reference in any Act to an optometrist registered under *The Optometry Act* shall be deemed to be a reference to an optometrist licensed under this Part and any reference to *The Optometry Act* shall be deemed to be a reference to this Part.

PART VI

PHARMACY

116.—(1) In this Part,

Interpre-
tation

(a) “by-laws” means the by-laws made under this Part;

(b) “College” means the Ontario College of Pharmacists;

(c) “Council” means the Council of the College;

(d) “drug” means any substance or preparation containing any substance,

(i) manufactured, sold or represented for use in,

1. the diagnosis, treatment, mitigation or prevention of a disease, disorder, abnormal physical or mental state or the symptoms thereof, in humans, animals or fowl, or

2. restoring, correcting, or modifying functions in humans, animals or fowl,

(ii) referred to in Schedule C, D, E, F, G or N, or

(iii) listed in a publication named by the regulations,

(iv) named in the regulations,

but does not include,

(v) any substance or preparation referred to in sub-clause i, ii or iii manufactured, offered for sale or sold as, or as part of, a food, drink or cosmetic,

(vi) any medicine registered under the *Proprietary or Patent Medicine Act* (Canada) and sold in accordance with its provisions, or

(vii) a substance or preparation named in Schedule A or B;

(e) “interchangeable pharmaceutical product” means a product containing a drug or drugs in the same

R.S.C. 1970,
c. P-25

amounts of the same active ingredients in the same dosage form as that directed by a prescription;

- (f) "intern" means a person who is registered under this Part as an intern;
- (g) "licence" means a licence to act as a pharmacist issued under this Part;
- (h) "member" means a member of the College;
- (i) "Parcost C.D.I." means the Parcost Comparative Drug Index prescribed by the regulations;
- (j) "pharmacist" means a person who is licensed under this Part as a pharmacist;
- (k) "pharmacy" means a premises in or in part of which prescriptions are compounded and dispensed for the public or drugs are sold by retail;
- (l) "prescriber" means a legally qualified medical practitioner, dentist or veterinarian who gives a prescription;
- (m) "prescription" means a direction from a prescriber directing the dispensing of any drug or mixture of drugs for a designated person or animal;
- (n) "register" means a register maintained by the Registrar under this Part;
- (o) "registered pharmacy student" means a person who is registered under this Part as a pharmacy student;
- (p) "Registrar" means the Registrar of the College;
- (q) "registration" means a registration as an intern or registered pharmacy student and "registered" has a corresponding meaning;
- (r) "regulations" mean the regulations made under this Part.

(2) A reference in this Part to Schedules A, B, C, D, E, F, G or N is a reference to such Schedule established by the regulations for the purposes of this Part.

(3) The practice of a pharmacist is a health discipline to which this Part applies.

117.—(1) This Part does not apply to,

Application
of Part

(a) drugs compounded, dispensed or supplied under the authority of a prescriber for persons under health care in a hospital or a health or custodial institution approved or licensed under any general or special Act;

(b) the selling of,

(i) any substance registered under the Pest Control Products Act (Canada) and sold in accordance with its provisions,

(ii) any feeding stuffs registered under the Feeds Act (Canada) and sold in accordance with its provisions,

(iii) a drug by a person licensed under The Live Stock Medicines Act, 1973;

(c) the practice of a veterinarian under The Veterinarians Act.

(2) Nothing in this Part prevents any person from selling or dispensing a drug to a person authorized under this Act to dispense, prescribe or administer drugs.

THE ONTARIO COLLEGE OF PHARMACISTS

118.—(1) The Ontario College of Pharmacy is continued as the Ontario College of Pharmacists, being a body corporate without share capital with power to acquire, hold and dispose of real and personal property for the purposes of this Part.

(2) The objects of the College are,

Objects

(a) to regulate the practice of pharmacists and to govern its members in accordance with this Act, the regulations and the by-laws;

- (b) to establish, maintain and develop standards of knowledge and skill among its members;
- (c) to establish, maintain and develop standards of qualification and practice for the practice of pharmacists;
- (d) to establish, maintain and develop standards of professional ethics among its members;
- (e) to establish, maintain and develop standards for the operation of pharmacies;
- (f) to administer this Part and perform such other duties and exercise such other powers as are imposed or conferred on the college by or under any Act,

in order that the public interest may be served and protected.

**Membership
in the
College**

119.—(1) Every person licensed by the College is a member of the College subject to any term, condition or limitation to which the licence is subject.

**Resignation
of
membership**

(2) A member may resign his membership by filing with the Registrar his resignation in writing and his licence is thereupon cancelled subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

**Cancellation
for default
of fees**

(3) The Council may cancel a licence for non-payment of any prescribed fee after the member has been given at least two months notice of the default and intention to cancel, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

**Council
of the
College**

120.—(1) The Council of the Ontario College of Pharmacy is continued and shall be the governing body and board of directors of the Ontario College of Pharmacists and shall manage and administer its affairs.

**Composition
of Council**

(2) The Council shall be composed of,

- (a) not fewer than thirteen and not more than nineteen persons who are members and are elected by the members in the manner provided by the regulations;
- (b) not fewer than four and not more than six persons who are not members of a Council under this Act or registered or licensed under this or any other Act governing a health practice, and who are appointed by the Lieutenant Governor in Council; and

(c) the dean of each faculty of pharmacy in Ontario or, in his absence, a representative who is a member of the faculty and of the College appointed by the dean.

(3) The persons appointed under clause *b* of subsection 2 ^{Remuneration of}_{of} shall be paid out of moneys appropriated therefor by the ^{lay members} Legislature such expenses and remuneration as is determined by the Lieutenant Governor in Council.

(4) The appointment of every person appointed under subsection 2 expires at the first regular meeting of the Council ^{Expiration of appointment} following the election of members to Council held next after the effective date of his appointment, and a person whose appointment expires is eligible for reappointment.

(5) Every member who is,

^{Qualifications to}
vote

(a) resident in Ontario; and

(b) not in default of payment of the annual fee prescribed by the regulations,

is qualified to vote at an election of members of the Council.

(6) The Council shall elect a President and Vice-President ^{President, Vice-President} from among its members.

(7) The Council shall appoint during pleasure a Registrar ^{Registrar and staff} and may appoint a deputy registrar who shall have the powers of the Registrar for the purposes of this Part, and may appoint such other persons as are from time to time necessary or desirable in the opinion of the Council to perform the work of the College.

(8) A majority of the members of the Council con-^{Quorum} stitutes a quorum.

(9) The Council shall meet at least twice a year.

^{Meetings of Council}

(10) The members of the Council of the Ontario College of Pharmacy who were elected under *The Pharmacy Act*, being members under chapter 348 of the Revised Statutes of Ontario, 1970 and R.S.O. 1970, c. 348 were in office immediately before this Part comes into force shall continue in office and shall be deemed to be the members referred to in clause *a* of subsection 2 until the expiration of the term for which they were elected or until the office otherwise becomes vacant.

Powers of
Minister

121. In addition to his powers and duties under Part 1, the Minister may,

- (a) review the activities of the Council;
- (b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;
- (c) advise the Council with respect to the implementation of this Part and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures.

Regulations

122.—(1) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations,

- (a) fixing the number of members to be elected to the Council and establishing the regional and other representation for elections;
- (b) respecting and governing the qualifications, nomination, election and term of office of the members to be elected to the Council, and controverted elections;
- (c) prescribing the conditions disqualifying elected members from sitting on the Council and governing the filling of vacancies on the Council;
- (d) respecting any matter ancillary to the provisions of this Part with regard to the issuing, suspension and revocation of licences and registrations;
- (e) prescribing classes of licences governing the requirements and qualifications for the issuing of licences or any class thereof and prescribing the terms and conditions thereof;
- (f) prescribing the qualifications for and conditions of registration of students and interns and governing in-service training for students and interns;
- (g) providing for the maintenance and inspection of registers;
- (h) governing standards of practice for the profession;
- (i) respecting the advertising of professional services;
- (j) prescribing the books and records to be kept, returns to be made and information to be furnished with respect to pharmacies and the practice of pharmacists and providing for the examination and audit of such books and records, as the regulations prescribe;

- (k) regulating advertising by members;
- (l) providing for the designation of honorary members of the College and prescribing their rights and privileges;
- (m) prohibiting practice by pharmacists where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
- (n) defining professional misconduct for the purposes of this Part;
- (o) providing for a program of continuing education of members to maintain their standard of competence and requiring members to participate in such continuing education;
- (p) regulating, controlling and prohibiting the use of terms, titles or designations by members or groups or associations of members in respect of their practices;
- (q) respecting the reporting and publication of decisions in disciplinary matters;
- (r) providing for the compilation of statistical information on the supply, distribution and professional activities of members and requiring members to provide the information necessary to compile such statistics;
- (s) respecting the duties and authority of the Registrar;
- (t) requiring the payment of annual fees by members, students and interns and fees for licensing, registration, examinations and continuing education, including penalties for late payment, and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof;
- (u) prescribing forms and providing for their use;
- (v) providing for the exemption of any member from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable.

(2) The number of members to be elected to the Council and the electoral divisions and other representation fixed and established under clause *a* of subsection 1 shall not be altered or amended more than once in any five year period.

Amendment of electoral divisions

By-laws

123.—(1) The Council may pass by-laws relating to the administrative and domestic affairs of the College not inconsistent with this Act and the regulations and without limiting the generality of the foregoing,

- (a) prescribing the seal of the College;
- (b) providing for the execution of documents by the College;
- (c) respecting banking and finance;
- (d) fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;
- (e) providing procedures for the election of President and Vice-President of the College, the filling of a vacancy in those offices, and prescribing the duties of the President and Vice-President;
- (f) respecting the calling, holding and conducting of meetings of the Council and the duties of members of Council;
- (g) respecting the calling, holding and conducting of meetings of the membership of the College;
- (h) prescribing the remuneration of the members of the Council and committees other than persons appointed by the Lieutenant Governor in Council and providing for the payment of necessary expenses of the Council and committees in the conduct of their business;
- (i) providing for the appointment, composition, powers and duties of such additional or special committees as may be required;
- (j) delegating to the Executive Committee such powers and duties of the Council as are set out in the by-law, other than the power to make, amend or revoke regulations and by-laws;
- (k) providing for a code of ethics;
- (l) providing for the appointment of inspectors for the purposes of this Part;
- (m) prescribing forms and providing for their use;

- (n) providing procedures for the making, amending and revoking of the by-laws;
- (o) respecting management of the property of the College;
- (p) respecting the application of the funds of the College and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;
- (q) providing for the entering into arrangements by the College for its members respecting indemnity for professional liability and respecting the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members and exempting members or any class thereof from all or part of any such levy;
- (r) respecting membership of the College in a national organization with similar functions, the payment of an annual assessment and provision for representatives at meetings;
- (s) authorizing the making of grants for any purpose that may tend to advance scientific knowledge or pharmacy education, or maintain or improve the standards of practice in pharmacy or to support and encourage public information and interest in the past and present role of pharmacy in society;
- (t) respecting all of the things that are considered necessary for the attainment of the objects of the College and the efficient conduct of its affairs.

(2) A copy of the by-laws made under subsection 1 and ^{Distribution of} by-laws amendments thereto,

- (a) shall be forwarded to the Minister;
- (b) shall be forwarded to each member; and
- (c) shall be available for public inspection in the office of the College.

124.—(1) Except as provided in this Part, no person shall ^{Licence to act as} pharmacist act or hold himself out as acting as a pharmacist unless he is licensed under this Part.

Use of
titles

(2) Any person who, in making or purporting to make a retail sale of a drug or substance in Schedule A or B, uses or associates therewith the title or designation of,

- (a) pharmacist;
- (b) pharmaceutical chemist;
- (c) chemist;
- (d) druggist;
- (e) apothecary,

whether or not in combination with each other or with any other term shall be deemed to be holding himself out as acting as a pharmacist for the purposes of subsection 1.

Conflict
with other
health
discipline

(3) A licence shall be deemed to authorize a member to act as a pharmacist under this Part, notwithstanding that such action is included in the practice of any other health discipline.

Establish-
ment of
committees

125.—(1) The Council shall establish and appoint as hereinafter provided the following committees,

- (a) Executive Committee;
- (b) Accreditation Committee;
- (c) Registration Committee;
- (d) Complaints Committee;
- (e) Discipline Committee,

and may establish such other committees as the Council from time to time considers necessary.

Vacancies

(2) Where one or more vacancies occur in the membership of the Council or any committee, the members remaining in office constitute the Council or committee so long as their number is not fewer than the prescribed quorum.

Completing
quorum

(3) Where the persons attending a meeting of any Committee duly called fail to constitute a quorum, the President may appoint such members of the Council as are required to complete the quorum to attend the meeting and act as a member of the Committee for the purposes of the meeting.

126.—(1) The Executive Committee shall be composed of, ^{Executive Committee}

(a) the President, who shall be Chairman of the Committee;

(b) the Vice-President; and

(c) three members of the Council appointed by the Council, one of whom shall be the immediate past president, if he is a member of Council, and one of whom shall be a person appointed to the Council by the Lieutenant Governor in Council.

(2) A majority of the members of the Executive Committee ^{Quorum} constitutes a quorum.

(3) The Executive Committee shall perform such functions ^{Duties} of the Council as are delegated to it by the Council, the by-laws or this Part and, subject to ratification by the Council at its next ensuing meeting, may take action upon any other matter that requires immediate attention between meetings of the Council, other than to make, amend or revoke a regulation or by-law.

127.—(1) The Registration Committee shall be composed ^{Registration Committee} of,

(a) one member of the Council who is the dean of a faculty of pharmacy, or his representative on the Council;

(b) two members of the Council who were elected to the Council; and

(c) one member of the Council who was appointed to the Council by the Lieutenant Governor in Council.

(2) The Council shall name one member of the Registration Committee to be Chairman.

(3) A majority of the members of the Registration Committee constitutes a quorum.

128.—(1) The Registrar shall issue a licence or registration ^{Licences and registrations} to any applicant therefor who is qualified under this Part and the regulations and has passed such examinations as the Council may set or approve, and the Registrar shall refer to the Registration Committee every application for a licence or registration that he proposes to refuse or to which he considers terms, conditions or limitations should be attached.

Powers and
duties of
Registration
Committee

(2) The Registration Committee,

- (a) shall determine the eligibility of applicants for licences and registrations and may require an applicant to take and pass such additional examinations as the Council may set or approve and pay such fees therefor as the Registration Committee fixes or to take such additional training as the Registration Committee specifies; and
- (b) may exempt an applicant from any admission requirement.

Conditions
of licences

(3) The Registration committee may direct the Registrar to issue or refuse to issue licences or make or refuse to make registrations or to issue licences and make registrations subject to such terms, conditions and limitations as the Committee specifies.

Review of
qualifications

(4) The Registration Committee may review the qualifications of any member and may impose a further term, condition or limitation on his licence pending the demonstration of such standard of competence through the completion of such experience, courses of study or continuing education as the Committee specifies.

Registers of
licences

(5) The Registrar shall maintain one or more registers in which is entered every person who is licensed or registered under this Part, identifying the terms, conditions and limitations attached to the licence or registration, and shall note on the register every revocation, suspension and cancellation or termination of a licence or registration and such other information as the Registration Committee or Discipline Committee directs.

Continuation
of licences
R.S.O. 1970,
c. 348

(6) Every licence and registration issued or made under *The Pharmacy Act*, being chapter 348 of the Revised Statutes of Ontario, 1970, and in effect immediately before this Part comes into force continues in the same manner as if issued or made under this Part.

Accredita-
tion
Committee

129.—(1) The Accreditation Committee shall be composed of,

- (a) three members of the Council who were elected to the Council; and
- (b) one member of the Council who was appointed to the Council by the Lieutenant Governor in Council,

and shall exercise the powers and carry out the duties assigned to it under sections 138 and 139.

(2) No person who is a member of the Discipline Committee ^{Idem} shall be a member of the Accreditation Committee.

(3) The Council shall name one member of the Accreditation Committee to be Chairman.

(4) A majority of the members of the Accreditation Committee constitutes a quorum.

130.—(1) The Complaints Committee shall be composed ^{Complaints Committee} of,

(a) three members of the Council who were elected to the Council; and

(b) one member of the Council who was appointed to the Council by the Lieutenant Governor in Council.

(2) No person who is a member of the Discipline Committee ^{Idem} shall be a member of the Complaints Committee.

(3) The Council shall name one member of the Complaints Committee to be its Chairman.

(4) A majority of the members of the Complaints Committee constitutes a quorum.

131.—(1) The Complaints Committee shall consider and ^{Duties} investigate complaints made by members of the public regarding the conduct or actions of any member of the College, but no action shall be taken by the Committee under subsection 2 unless,

(a) a written complaint has been filed with the Registrar and the member whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations he may wish to make concerning the matter; and

(b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

(2) The Committee in accordance with the information it ^{Idem} receives may,

- (a) direct that the matter be referred, in whole or in part, to the Discipline Committee or to the Executive Committee for the purposes of section 134; or
- (b) direct that the matter not be referred under clause *a*; or
- (c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Part or the regulations or by-laws.

Decision

(3) The Committee shall give its decision in writing to the Registrar for the purposes of section 8.

Discipline Committee

132.—(1) The Discipline Committee shall be composed of,

- (a) four members of the Council who were elected to the Council; and
- (b) one member of the Council who was appointed to the Council by the Lieutenant Governor in Council.

Quorum and votes

(2) Three or more members of the Discipline Committee, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum, and all disciplinary decisions require the vote of a majority of the members present at the meeting.

Chairman

(3) The Council shall name one member of the Discipline Committee to be its Chairman.

Reference by Council or Executive Committee

(4) Notwithstanding section 131, the Council or the Executive Committee may direct the Discipline Committee to hold a hearing and determine any specified allegation of professional misconduct or incompetence on the part of a member.

Duties of Discipline Committee

133.—(1) The Discipline Committee shall,

- (a) when so directed by the Council, Executive Committee or Complaints Committee, hear and determine allegations of professional misconduct or incompetence against any member;
- (b) hear and determine matters referred to it under section 131, 132, 135 or 139; and
- (c) perform such other duties as are assigned to it by the Council.

Idem

(2) In the case of hearings into allegations of professional misconduct or incompetence, the Discipline Committee shall,

- (a) consider the allegations, hear the evidence and ascertain the facts of the case;
- (b) determine whether upon the evidence and the facts so ascertained the allegations have been proved;
- (c) determine whether in respect of the allegations so proved the member is guilty of professional misconduct or incompetence;
- (d) determine the penalty to be imposed as hereinafter provided in cases in which it finds the member guilty of professional misconduct or of incompetence.

(3) A member may be found guilty of professional misconduct by the Committee if,

- (a) he has been found guilty of an offence relevant to his suitability to practise, upon proof of such conviction;
- (b) he has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.

(4) The Discipline Committee may find a member to be incompetent if in its opinion he has displayed in his professional responsibilities a lack of knowledge, skill or judgment or disregard for the welfare of the public he serves of a nature or to an extent that demonstrates he is unfit to carry out the responsibilities of a pharmacist.

(5) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence it may by order, Powers of Discipline Committee

- (a) revoke the licence of the member;
- (b) suspend the licence of the member for a stated period not exceeding twelve months;
- (c) impose such restrictions on the licence of the member for such a period and subject to such conditions as the Committee designates;
- (d) reprimand the member, and if deemed warranted, direct that the fact of such reprimand be recorded on the register;
- (e) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates,

or any combination thereof.

Costs

(6) Where the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee may order that the College reimburse the member for his costs or such portion thereof as the Discipline Committee fixes.

Stay on appeal for incompetence

(7) Where the Discipline Committee revokes, suspends or restricts a licence on the grounds of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

Stay on appeal for professional misconduct

(8) Where the Discipline Committee revokes, suspends or restricts the licence of a member on grounds other than for incompetence, the order shall not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned.

Service of decision of Discipline Committee

(9) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the member.

Continuation on expiry of Committee membership

(10) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his term of office had not expired or been terminated.

Interpretation

134.—(1) In this section,

- (a) “board of inquiry” means a board of inquiry appointed by the Executive Committee under subsection 2;
- (b) “incapacitated member” means a member suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member that he no longer be permitted to practise as a pharmacist or that his practice be restricted.

Reference to board of inquiry

(2) Where the Registrar receives information leading him to believe that a member may be an incapacitated member, he shall make such inquiry as he considers appropriate and report to the Executive Committee who may, upon notice to the member, appoint a board of inquiry composed of at

least two members of the College and one member of the Council appointed thereto by the Lieutenant Governor in Council who shall inquire into the matter.

(3) The board of inquiry shall make such inquiries as it ^{Examination} considers appropriate and may require the member to submit to physical or mental examination by such qualified person as the board designates and if the member refuses or fails to submit to such examination the Executive Committee on the recommendation of the Board may order that his licence be suspended until he complies.

(4) The board of inquiry shall report its findings to the ^{Hearing by Registration Committee} Executive Committee and deliver a copy thereof and a copy of any medical report obtained under subsection 3 to the member about whom the report is made and if, in the opinion of the Executive Committee, the evidence so warrants, the Executive Committee shall refer the matter to the Registration Committee to hold a hearing and the Executive Committee may, on the recommendation of the Registration Committee, suspend the member's licence until the determination of the question of his capacity becomes final.

(5) The College, the person whose capacity is being investigated ^{Parties} and any other person specified by the Committee are parties to the hearing.

(6) A legally qualified medical practitioner is not compellable to produce at the hearing his case histories, notes or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment and such report shall be signed by him and served upon the other parties to the proceedings, ^{Medical evidence}

- (a) where the evidence is required by the College, at least five days before the hearing commences; and
- (b) where the evidence is required by the person about whom the report is made, at least five days before its introduction as evidence,

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

Powers of
Registration
Committee

- (7) The Registration Committee shall, after the hearing,
- (a) make a finding as to whether or not the member is an incapacitated member; and
 - (b) where the member is found to be an incapacitated member, by order,
 - (i) revoke his licence,
 - (ii) suspend his licence for such period as the Committee considers appropriate, or
 - (iii) attach such terms and conditions to the licence as the Committee considers appropriate.

Notice
of orders

- (8) The Registrar may give notice of an order made under this section to such persons as he considers appropriate in the public interest.

Procedures

- (9) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration and appeals therefrom apply, *mutatis mutandis*, to proceedings of the Registration Committee under this section, except that the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

Restoration
of licence

- 135.**—(1) A person whose licence has been revoked for cause under this Part, or registration has been suspended or cancelled for cause under a predecessor of this Part, may apply in writing to the Registrar for the issuance of a licence or removal of the suspension, but such application shall not be made sooner than one year after the revocation or cancellation or, where the suspension is for more than one year, one year after the suspension.

Reference
to
Discipline
Committee

- (2) The Registrar shall refer the application to the Discipline Committee, or where the revocation or suspension was on the grounds of incapacity, to the Registration Committee, which shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Council and to the former member.

Procedures

- (3) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration, except subsection 9 of section 11 apply, *mutatis mutandis*, to proceedings

of the Registration Committee and Discipline Committee under this section.

(4) Notwithstanding subsections 1, 2 and 3, the Council or the Executive Committee may direct at any time that a licence be issued to a person whose licence has previously been revoked for cause or a suspension for cause be removed, subject to such terms, conditions or limitations as the Council or Executive Committee, as the case may be, considers appropriate.

Direction
by Council
to issue
licence

136.—(1) Where the Registrar believes on reasonable and probable grounds that a member has committed an act of professional misconduct or incompetence the Registrar may by order appoint one or more persons to make an investigation to ascertain whether such act has occurred, and the person appointed shall report the result of his investigation to the Registrar.

Investiga-
tion of
members

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the practice of the member in respect of whom the investigation is being made and may upon production of his appointment enter at any reasonable time the business premises of such person and examine books, records, documents and things relevant to the subject-matter of the investigation and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to such inquiry as if it were an inquiry under that Act.

Powers of
investigator

1971, c. 49

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation.

Obstruction
of
investigator

(4) Where a provincial judge is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the provincial judge may, whether or not an inspection has been made or attempted under subsection 2, issue an order authorizing the person making the investigation, together with

Search
warrant

such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the provincial judge, by the order, authorizes the person making the investigation to make the search at night.

*Removal of
books, etc.*

(5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, records, documents or things examined under subsection 2 or 4 relating to the member whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, records or documents, but such copying shall be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member whose practice is being investigated.

*Admissi-
bility of
copies*

(6) Any copy made as provided in subsection 5 and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, record or document and its contents.

*Report of
Registrar*

(7) The Registrar shall report the results of the investigation to the Council or the Executive Committee or such other Committee as he considers appropriate.

*Matters
confidential*

137.—(1) Every person employed in the administration of this Part, including any person making an inquiry or investigation under section 136, shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry or investigation and shall not communicate any such matters to any other person except,

1972, c. 91

- (a) as may be required in connection with the administration of this Part and the regulations and by-laws or any proceedings under this Part or the regulations; or
- (b) as may be required for the enforcement of *The Health Insurance Act, 1972*;
- (c) to his counsel; or
- (d) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry or investigation except in a proceeding under this Part or the regulations or by-laws.

PHARMACIES

138.—(1) No person shall establish or operate a pharmacy unless a certificate of accreditation has been issued in respect thereof.

(2) The Registrar shall issue a certificate of accreditation and renewals thereof to any applicant therefor where the applicant and the pharmacy and its proposed operation qualify under this Part and the regulations and shall refer to the Accreditation Committee every application for a certificate or renewal that he proposes to refuse or to which he considers terms, conditions or limitations should be attached.

(3) The Accreditation Committee shall determine the eligibility of the applicant and the pharmacy or proposed pharmacy and its operation and may direct the Registrar to issue or refuse to issue the accreditation certificate or to issue the accreditation certificate subject to such terms, conditions or limitations as the Committee directs.

(4) The provisions of Part I applying to hearings, review procedures and appeals in respect of proceedings of the Registration Committee apply, *mutatis mutandis*, in respect of proceedings of the Accreditation Committee.

(5) Every certificate of accreditation issued under *The Pharmacy Act*, being chapter 348 of the Revised Statutes of Ontario, 1970, and in effect immediately before this Part comes into force continues in the same manner as if issued under this Part.

139.—(1) Where the Accreditation Committee has reason to believe that a pharmacy or its operation fails to conform to the requirements of this Part and the regulations or to any term, condition or limitation to which its certificate of accreditation is subject, the Committee may refer the matter to the Discipline Committee for a hearing and determination.

(2) Where the Accreditation Committee refers a matter to the Discipline Committee and the Discipline Committee finds

that a pharmacy or its operation fails to conform to the requirements of this Part and the regulations or to any term, condition or limitation to which its certificate of accreditation is subject, the Discipline Committee may,

- (a) suspend the certificate of accreditation for a stated period; or
- (b) revoke the certificate of accreditation.

Procedures

(3) The provisions of Part I and this Part applying to proceedings before the Discipline Committee in respect of professional misconduct and appeals therefrom apply to the proceedings before the Discipline Committee under this section.

**Cancellation
for non-
payment
of fee**

(4) The Council may cancel a certificate of accreditation for non-payment of the prescribed fee after the person operating the pharmacy has been given at least two months notice of default and intention to cancel.

**Closing
of pharmacy**

140. Every person who permanently closes a pharmacy shall immediately remove all signs and symbols relating to the practice of pharmacy either within or outside the premises, shall remove and dispose of all drugs according to law and shall submit in writing to the Registrar such information and within such time as the regulations prescribe.

**Operation of
pharmacies
by corpora-
tion**

141.—(1) No corporation shall own or operate a pharmacy unless the majority of the directors of the corporation are pharmacists.

Idem

(2) No corporation shall own or operate a pharmacy unless a majority of each class of shares of the corporation is owned by and registered in the name of pharmacists.

**Application
of subs. 2**

(3) For the purposes of subsection 2, shares registered in the name of the personal representative of a deceased pharmacist shall, for a period not exceeding four years, be considered to be registered in the name of a pharmacist.

Idem

(4) Subsection 2 does not apply to any corporation operating a pharmacy on the 14th day of May, 1954.

**Application
of section**

(5) This section does not apply to the operation of a pharmacy by a non-profit corporation having as its objects and providing health services by members of more than one health discipline.

**Where
licence
revoked**

142. No person whose licence as a pharmacist has been revoked for cause or while his licence is suspended for cause,

- (a) shall be employed or work in a pharmacy; or
- (b) shall act as a director or vote as a shareholder in a corporation operating a pharmacy.

143.—(1) No person other than a pharmacist or a corporation complying with the requirements of section 141 shall own pharmacies or operate a pharmacy.

(2) For the purposes of the ownership of a pharmacy, or for the purposes of the composition of the board of directors or ownership of shares of a corporation as required by section 141, the right to operate the pharmacy shall not be affected by,

(a) any suspension of the licence of a pharmacist; or

(b) the revocation of the licence of a pharmacist until after a period of six months has elapsed.

144.—(1) Where a person owning and operating a pharmacy becomes bankrupt, insolvent or makes an assignment for the benefit of creditors, he shall so notify the Registrar and the trustee in bankruptcy, liquidator or assignee, as the case may be, may own and operate the pharmacy for the purposes of the bankruptcy, insolvency or assignment.

Carrying on business of bankrupt person

(2) Upon the death of a pharmacist who was owning and operating a pharmacy at the time of his death, the personal representative of such deceased person may own and operate the pharmacy for a period of four years or for such further period as the Council may authorize.

Carrying on business of deceased person

(3) Every person authorized to own and operate a pharmacy under subsection 1 or 2 shall immediately upon becoming so authorized file with the Registrar evidence of his authority.

Notification to Registrar

145.—(1) No person shall operate a pharmacy unless,

Supervision of pharmacist

(a) it is under the supervision of a pharmacist who is physically present; and

(b) it is managed by a pharmacist so designated by the owner of the pharmacy.

(2) Every pharmacist practising in a pharmacy shall publicly display his licence in the pharmacy except during such period, if any, as the licence is under suspension.

Displaying licence

146. No person shall in connection with a retail business use the designation,

(a) drug store;

(b) pharmacy;

- (c) drug department;
- (d) drug sundries;
- (e) drug or drugs;
- (f) drug mart; or
- (g) medicines,

unless the business is an accredited pharmacy.

**Inspection
of premises**

147.—(1) An inspector appointed under a by-law may enter any pharmacy or other shop in the performance of his duties under this Part at all reasonable times.

**Inspection
of records**

(2) Any record required to be kept under this Part shall be open to inspection by any inspector appointed under a by-law.

DRUGS

**Dispensing
of drugs**

148.—(1) Subject to section 153, no person other than a pharmacist or an intern or a registered pharmacy student acting under the supervision of a pharmacist who is physically present shall compound, dispense or sell any drug in a pharmacy.

**Exception
for certain
drugs**

(2) Where a pharmacist or an intern is present in the pharmacy and is available to the purchaser for consultation, subsection 1 does not apply to the sale in a pharmacy of a drug other than,

- (a) a drug requiring a prescription for sale;
- (b) a drug referred to in Part I of Schedule D; or
- (c) a drug referred to in Schedule C.

**Misrepresen-
tation**

149. No person shall knowingly sell any drug under the representation or pretence that it is a particular drug that it is not, or contains any substance that it does not.

**Labelling
of Sched. D
drugs**

150.—(1) No person shall sell a drug listed in Schedule D unless it is labelled in accordance with the regulations.

**Record
of poisons**

(2) No person shall sell by retail a drug listed in Part I of Schedule D unless a record of the sale is made in such manner as the regulations prescribe.

(3) Subsections 1 and 2 do not apply to a drug when it is dispensed pursuant to a prescription or forms part of the ingredients of a prescription. ^{Exception}

151. Drugs referred to in Schedules D, E, F, G and N shall be sent through the mail only by registered mail. ^{Mailing of drugs}

152. The manager of every pharmacy shall keep or cause to be kept a record of every purchase and sale of a drug referred to in Schedule G or N in such form or manner as the regulations may prescribe. ^{Records of pharmacy}

153.—(1) No person shall sell by retail a substance listed in Schedule B unless it is labelled in accordance with the regulations. ^{Sale of drugs}

(2) No person other than a pharmacist shall sell by retail a substance listed in Schedule B for the prevention or treatment of an ailment, disease or physical disorder, unless it is sold in the container in which it was received by the seller. ^{Idem}

154.—(1) Subject to the regulations, no person shall sell by retail any drug referred to in Schedule E, F, G or N, except on prescription given in such form, in such manner and under such conditions as the regulations prescribe. ^{Prescription drugs}

(2) Subsection 1 does not apply to drugs referred to in Part II of Schedule F that are sold in a container labelled by the manufacturer as for veterinary or agricultural use or sold in a form unsuitable for human use. ^{Exception}

155.—(1) Every person who dispenses a drug pursuant to a prescription shall ensure that the following information is recorded on the prescription, ^{Information noted on prescription}

- (a) the name and address of the person for whom the drug is prescribed;
- (b) the name, strength (where applicable) and quantity of the prescribed drug;
- (c) the directions for use, as prescribed;
- (d) the name and address of the prescriber;
- (e) the identity of the manufacturer of the drug dispensed;
- (f) an identification number or other designation;

(g) the signature of the person dispensing the drug and, where different, also the signature of the person receiving a verbal prescription;

(h) the date on which the drug is dispensed;

(i) the price charged.

**Retention
of records**

(2) The records required under subsection 1 shall be retained for not less than six years.

**Identifica-
tion
markings**

(3) The container in which the drug is dispensed shall be marked with,

(a) the identification number that is on the prescription;

(b) the name, address and telephone number of the pharmacy in which the prescription is dispensed;

(c) the identification of the drug as to its name, its strength and its manufacturer, unless directed otherwise by the prescriber;

(d) the quantity where the drug dispensed is in solid oral dosage form;

(e) the name of the owner of the pharmacy;

(f) the date the prescription is dispensed;

(g) the name of the prescriber;

(h) the name of the person for whom it is prescribed;

(i) the directions for use as prescribed.

**Copy of
prescription**

156.—(1) Every person in respect of whom a prescription is presented to a pharmacist to be dispensed, unless otherwise directed by the prescriber, is entitled to have a copy of it marked as such, furnished to him, his agent, or a pharmacist acting on behalf of such person or agent.

**Disposal of
prescriptions**

(2) Prescriptions in a pharmacy that ceases to operate as a pharmacy shall be delivered to the persons, or agents of the persons, who presented the prescription or to another pharmacy that is reasonably readily available to such person or his agent, or failing either, to the College.

**Prescription
by doctor
out of
Ontario**

157. A pharmacist may dispense a drug pursuant to a written order signed by a physician or dentist licensed to

practise in a province in Canada other than Ontario, if in the professional judgment of the pharmacist the patient requires the drug immediately, but such order shall not be refilled.

158.—(1) Every person who dispenses a prescription may, unless otherwise directed by the prescriber, select and dispense an interchangeable pharmaceutical product other than the one prescribed, if the interchangeable pharmaceutical product dispensed is listed as interchangeable in the Parcost C.D.I., and is lower in cost than the drug prescribed.

(2) Where a drug prescribed is listed in the Parcost C.D.I. and the identity of the manufacturer is not specified by the prescriber every person who dispenses a prescription shall select and dispense an interchangeable pharmaceutical product listed in the Parcost C.D.I.

(3) No person shall knowingly supply an interchangeable product under subsection 1 or 2 at a price in excess of the cost of the lowest priced interchangeable pharmaceutical product in his inventory and the maximum dispensing fee as set out in the Parcost C.D.I.

(4) No action or other proceeding lies or shall be instituted against a prescriber or pharmacist on the grounds that an interchangeable pharmaceutical product other than the one prescribed was dispensed in accordance with this section.

159.—(1) Every person who operates or manages a pharmacy shall provide the Minister with such information from records required to be kept under section 155 as the Minister requests.

(2) The Registrar shall provide the Minister with such information respecting substances referred to in the Schedules, except Schedule A, as the Registrar possesses and the Minister requests.

160.—(1) No person shall sell by wholesale any drug for the purpose of sale by retail to any person who is not entitled to sell the drug by retail.

(2) Every person supplying drugs by wholesale in Ontario shall register with the College as a drug wholesaler and furnish the Registrar with a signed statement showing,

(a) his full name and address, or if a corporation the name of the corporation, the names and addresses of the president and directors thereof;

(b) the principal business address,

and with respect to his places of business where drugs are handled,

(c) the address of each place of business, agent or representative in Ontario;

(d) the name of the manager or person responsible for each place of business in Ontario;

(e) the date on which he proposes to commence business at each new location in Ontario.

Furnishing
of informa-
tion

(3) The information required by subsection 2 shall be furnished within thirty days after this Part comes into force and thereafter at least seven days before commencing business and any change in the information required by subsection 2 shall be furnished to the Registrar within seven days of the change.

Regulations

161.—(1) Subject to the approval of the Lieutenant Governor in Council, the Council may make regulations,

(a) prescribing the substances that are included in Schedules A, B, C, D, E, F, G and N for the purpose of this Part;

(b) naming substances for the purposes of clause *d* of subsection 1 of section 116 and specifying the provisions of this Act that shall apply in respect of such substances;

(c) naming publications for the purposes of clause *d* of subsection 1 of section 116;

(d) prescribing the percentage of any substance to be contained in any preparation referred to in any Schedule;

(e) prescribing the manner in which prescriptions shall be given in respect of the drugs referred to in Schedules E, F, G and N and the conditions under which such prescriptions may be given;

(f) authorizing the refilling of prescriptions without further prescription and prescribing the conditions under which prescriptions may be refilled without further prescription;

- (g) prescribing the manner in which records shall be kept of the purchase and sale of the drugs referred to in Schedules D, G and N;
- (h) pertaining to the transfer of prescriptions and the records to be kept by the transferor and the transferee;
- (i) designating substances listed in Schedule D that may be sold by persons not otherwise authorized under this Part and authorizing the sale of such substances by any persons or classes of persons not otherwise authorized under this Part and prescribing the conditions under which such substances shall be sold by such persons or classes of persons;
- (j) prescribing the labelling of substances listed in Schedule B for the purposes of section 153;
- (k) providing for the establishment and maintenance of patient record systems;
- (l) prescribing the types of containers to be used for containing any drug and the designs, specifications and labelling of containers used for containing any drug;
- (m) prescribing standards for accreditation of pharmacies including maintenance, operation, space, equipment and facilities required therefor;
- (n) providing for applications for certificates of accreditation of pharmacies, and the issuance of such certificates and their expiration and renewal and requiring the payment of fees therefor and prescribing the amounts thereof;
- (o) providing for the filing with the Registrar of information respecting the location of the place of practice and the residential address of pharmacists, the name and address of pharmacies in the Province of Ontario including the name and address of the owner and the manager of such pharmacies, and any changes thereof, and the form of such information and the time of filing;
- (p) providing for the information, instruments or documents to be filed with the Registrar by persons opening, acquiring, relocating or closing a pharmacy, the form thereof and the time of filing;
- (q) prescribing standards for the subdivision of premises so that all or some specified drugs or classes thereof

are restricted to a specified area and so that the part of the premises to which such drugs are restricted may be rendered not accessible to the public, while the other part remains open.

Idem

- (2) The Lieutenant Governor in Council may make regulations,
 - (a) regulating the use of containers in which drugs may be dispensed and designating organizations to test, certify and designate containers that meet standards approved by the Minister for such purposes as may be specified in the regulations, and requiring the use of containers that are so certified and designated except under such circumstances as are prescribed;
 - (b) prescribing the Parcost C.D.I. for the purpose of this Part.

ENFORCEMENT

Restraining orders

162.—(1) Where it appears to the College that any person does not comply with any provision of this Part or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the College may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

Appeal

(2) An appeal lies to the Supreme Court from an order made under subsection 1.

Recovery of charges

163. A person who sells any drug in contravention of this Part or the regulations is not entitled to recover any charges in respect thereof.

Surrender of cancelled licence or accreditation certificate

164. Where a licence or certificate of accreditation is revoked or cancelled, the former holder thereof shall forthwith deliver the licence or certificate to the Registrar.

Penalties

165.—(1) Every person who is in contravention of section 124 is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$2,000 and for each subsequent offence to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both.

(2) Every person who not being a member uses an occupational designation prescribed by the regulations to be used by members or a like designation is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$1,000 and for each subsequent offence to a fine of not more than \$2,000.

(3) Every person who contravenes any provision of this Act or the regulations for which no penalty is otherwise provided is guilty of an offence and on summary conviction is liable to a fine not exceeding \$2,000.

166.—(1) Every owner or manager of a pharmacy is liable for every offence against this Part committed by any person in his employ or under his supervision with his permission, consent or approval, express or implied, and every director of a corporation operating a pharmacy is liable for every offence against this Part committed by any person in the employ of the corporation with his permission, consent or approval, express or implied.

Responsibility of owner and manager

(2) Where any person operates a pharmacy contrary to this Part or the regulations, the owner and manager of such pharmacy, or either of them, or any director of a corporation operating a pharmacy, may be proceeded against, and prosecution or conviction of either of them is not a bar to prosecution or conviction of the other.

167. In any prosecution under this Part,

Evidence

- (a) a certificate as to the analysis of any drug or poison purporting to be signed by a Food and Drug Analyst or Provincial Analyst is admissible in evidence as *prima facie* proof of the facts stated therein without proof of the appointment or signature of the analyst;
- (b) any article labelled as containing any drug is admissible in evidence as *prima facie* proof that the article contains the drug described on the label;
- (c) the label of the container of a drug dispensed pursuant to a prescription is admissible in evidence as *prima facie* proof that the drug named in the prescription was dispensed;
- (d) evidence that a drug is found in a shop or place in which business is transacted is admissible as *prima facie* proof that it was kept for sale;

- (e) evidence of the publishing of a sign, title or advertisement containing the name of an establishment or the owner thereof is admissible in evidence as *prima facie* proof that the sign, title or advertisement was published by the owner of the establishment.

Repeals

168.—(1) The following Acts are repealed:

1. *The Pharmacy Act*, being chapter 348 of the Revised Statutes of Ontario, 1970.
2. *The Pharmacy Amendment Act, 1972*, being chapter 99.
3. *The Pharmacy Amendment Act, 1973*, being chapter 126.

References

(2) Any reference in any Act or regulation to a pharmaceutical chemist registered under *The Pharmacy Act* shall be deemed to be a reference to a pharmacist licensed under this Part and any reference to *The Pharmacy Act* shall be deemed to be a reference to this Part.

MISCELLANEOUS

Commencement

169.—(1) This Act, except sections 1 to 5 and sections 7 to 168, comes into force on the day it receives Royal Assent.

Idem

(2) Sections 1 to 5 and sections 7 to 168, come into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

170. This Act may be cited as *The Health Disciplines Act, 1974*.

The Health Disciplines Act, 1974

1st Reading

April 2nd, 1974

2nd Reading

3rd Reading

THE HON. F. S. MILLER
Minister of Health

(*Government Bill*)

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Publications

BILL 22

Government Bill

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 Elizabeth II, 1974

The Health Disciplines Act, 1974

THE HON. F. S. MILLER
Minister of Health

(Reprinted as amended by the Social Development Committee)

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The Bill re-enacts the legislation governing five major health professions:

1. Dentistry.
2. Medicine.
3. Nursing.
4. Optometry.
5. Pharmacy.

The Bill incorporates recommendations of the Committee on the Healing Arts and of the Royal Commission Inquiry into Civil Rights, Vol. 3, Section 4.

The principal changes are:

1. lay representation on the professional governing council;
2. closer supervisory powers in the Minister;
3. the creation of a health disciplines board for the purpose of conducting hearings and review respecting complaints and applications for licensing;
4. a complete system of hearings and review for all matters of licensing and discipline with uniformity of procedures for all professions.

TABLE OF CONTENTS

	SEC.	PAGE
PART I — General	1—19	1
PART II — Dentistry	20—44	10
PART III — Medicine	45—68	28
PART IV — Nursing	69—90	47
PART V — Optometry	91—115	61
PART VI — Pharmacy	116—168	79

BILL 22**1974****The Health Disciplines Act, 1974**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I**GENERAL**

1.—(1) In this Act,

Interpre-
tation

- (a) “Board” means the Health Disciplines Board established under section 6;
- (b) “health discipline” means a health discipline to which a Part of this Act applies;
- (c) “Minister” means the Minister of Health;
- (d) “regulations” means the regulations made under this Act.

(2) In this Part,

Idem

- (a) “College” means the corporate body of a health discipline or group of health disciplines as established for that discipline or group in a Part of this Act;
- (b) “complaints committee” means the complaints committee of a health discipline or group of health disciplines as established for that discipline or group in a Part of this Act;
- (c) “Council” means the governing body of a health discipline or group of health disciplines as established for that discipline or group in a Part of this Act;

(d) "discipline committee" means the discipline committee of a health discipline or group of health disciplines as established for that discipline or group in a Part of this Act;

(e) "registration" means,

(i) a licence to practise a health discipline or group of health disciplines issued under a Part of this Act requiring a licence to practise, or

(ii) a certificate respecting the practising of a health discipline or group of health disciplines issued under a Part of this Act,

the issuance of which is required to be entered on the register of the appropriate College, and "registered" has a corresponding meaning.

References
to hearings
1971, c. 47

(3) Nothing in this Act shall be construed to require a hearing to be held within the meaning of *The Statutory Powers Procedure Act, 1971* unless the holding of a hearing is specifically referred to.

Administration
of Act

2. The Minister is responsible for the administration of this Act.

Duties of
Minister

3.—(1) It is the duty of the Minister to ensure that the activities of health disciplines are effectively regulated and co-ordinated in the public interest, to have appropriate standards of practice developed and ensure that these are maintained and to ensure that the rights of individuals to the services provided by health disciplines of their choice are maintained and to these ends to,

(a) inquire into or direct the appropriate Council or Councils to inquire into the state of the practice of one or more health disciplines in any locality or institution;

(b) require Councils to provide such reports and information as the Minister requires for his purposes including information from the registers of the Colleges;

(c) review proposals by a Council for changes in legislation or regulations of concern to that Council;

- (d) consider the by-laws of Councils and provide advice and guidance to Councils with respect to the proposed implementation or revision of such by-laws;
- (e) request a Council to make, amend or revoke regulations respecting any of the matters specified in its applicable Part; and
- (f) review legislation respecting the provision of health services by health disciplines.

(2) Where the Minister requests in writing that a Council make, amend or revoke a regulation under clause *e* of subsection 1 and the Council has failed to do so within sixty days after the request, the Lieutenant Governor in Council may make the regulation, amendment or revocation specified in the request.

(3) The Minister may appoint such advisory committees as he considers desirable and appropriate to assist him in carrying out his duties under this Act.

4. Where the Minister or a Council proposes changes to be made in legislation or regulations respecting a health discipline, the Minister shall distribute the proposals to all health disciplines and all health disciplines are entitled to make submissions to the Minister with respect to such proposals.

5. Where a College has incurred expenses in complying with the directions of the Minister under this Part, the Minister may, out of moneys appropriated therefor by the Legislature, make appropriate payments to reimburse the College in whole or in part for the expenses incurred.

6.—(1) There is hereby established a body to be known as the Health Disciplines Board.

(2) The Board shall be composed of not fewer than five and not more than seven members who shall be appointed by the Lieutenant Governor in Council on the recommendation of the Minister, and the Lieutenant Governor in Council shall designate one of the members of the Board to be chairman and one to be vice-chairman.

(3) No person who is employed in the public service of Ontario or of any agency of the Crown, or who is or has been a member of a Council or who is or has been registered under this Act or any other Act governing a health practice shall be a member of the Board.

Term	(4) The members of the first Board may be appointed for a term of one, two or three years and thereafter appointments and reappointments shall be for a term of three years.
Vacancies	(5) Every vacancy on the Board caused by the death, resignation or incapacity of a member, may be filled by the appointment by the Lieutenant Governor in Council of a person to hold office for the remainder of the term of such member.
Quorum	(6) A majority of the members of the Board constitutes a quorum.
Remuneration	(7) The members of the Board shall be paid such remuneration and expenses as are determined by the Lieutenant Governor in Council.
Seal	(8) The Board may prescribe and adopt a seal.
Board employees R.S.O. 1970, c. 386	(9) Such employees as are necessary to carry out the duties of the Board under this Act shall be employed under <i>The Public Service Act</i> .
Duties of Board	<p>7.—(1) The Board shall,</p> <ul style="list-style-type: none"> (a) conduct such hearings and perform such duties as are assigned to it by or under this or any other Act; and (b) submit an annual report on its activities to the Minister and which shall include such additional information as the Minister may require and the Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.
Expert advice	<p>(2) The Board may obtain expert or professional advice in connection with a hearing or complaint but the adviser shall be a person independent of,</p> <ul style="list-style-type: none"> (a) the parties in the case of a hearing; or (b) the complainant and the member complained against in the case of a complaint, <p>and in the case of a hearing, the nature of the advice shall be made known to the parties in order that they may make submissions as to the advice.</p>
Complaints	<p>8.—(1) Where a complaints committee has made a disposition of a complaint respecting a member of its College in accordance with the provisions of the applicable Part of this</p>

Act governing that College, the Registrar of the College shall send to the member and to the complainant by prepaid first class mail, a copy of the written decision made by the complaints committee and reasons therefor, if any, together with notice advising the complainant of his right of review under subsection 2.

(2) A complainant or the member complained against who is not satisfied with the decision made by a complaints committee disposing of a complaint, except a decision to refer a matter to the discipline committee, may within twenty days of receipt of the written decision request the Board to review the decision and the Board shall require the Registrar of the College to transmit to the Board within fifteen days of the Board's request, a record of the investigation and all such documents and things upon which the decision was based and the Board shall review the decision after giving the complainant an opportunity to state his complaint and the member an opportunity to state his answer thereto, either personally, by his agent or in writing.

9. Where a complaint respecting a member of a College ^{Investigation of complaint by Board} has not been disposed of by the complaints committee of the College within sixty days after the complaint is made, the Board upon application therefor may require the complaints committee to make an investigation and, where the investigation of the complaint has not been undertaken, completed and reported on to the Board by the committee within sixty days after the Board's request, the Board shall undertake such investigation and possesses all the powers of investigation that the complaints committee or the Registrar has in the applicable Part of this Act.

10.—(1) The Board may after review or investigation of a ^{Powers of Board after review or investigation of complaint} complaint under section 8 or 9 refer the complaint to the complaints committee and the Board may,

- (a) confirm the decision, if any, made by the complaints committee;
- (b) make such recommendations to the complaints committee as the Board considers appropriate; or
- (c) require the complaints committee to take such action or proceedings as the committee is authorized to undertake under the applicable Part of this Act.

(2) Three members of the Board constitute a quorum for ^{Board quorum} purposes of investigation or review of a complaint under section 8 or 9 or a hearing under section 11.

 (3) The Board shall give its decision and reasons therefor ^{Decision and reasons} in writing to the complainant and the member complained against.

Notice of proposal to refuse registration

11.—(1) Where a registration committee proposes to refuse to grant registration to an applicant, or proposes to attach terms, conditions or limitations to a registration, the Registrar on behalf of the committee shall serve notice of the proposal of the committee, together with written reasons therefor, on the applicant or registrant and a copy thereof to the Board.

Exemptions

(2) Subsection 1 does not apply to a refusal to grant registration to a person who was previously registered and whose registration was suspended or revoked as a result of a decision of a discipline committee.

Notice requiring hearing or review

(3) A notice under subsection 1 shall inform the applicant or registrant that he is entitled to a hearing by the Board or to a review by the Board of his application and documentary evidence in support thereof without oral evidence, if he mails or delivers within fifteen days after the notice under subsection 1 is served on him, notice in writing to the Board requiring a hearing or such review by the Board, as he specifies.

Powers of registration committee where hearing or review

(4) Where an applicant or registrant does not require a hearing or review by the Board in accordance with subsection 3, the Board shall so notify the registration committee making the proposal and the committee may carry out the proposal stated in its notice under subsection 1.

Findings of fact
1971, c. 47

(5) The findings of fact of the Board pursuant to a hearing or review shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of *The Statutory Powers Procedure Act, 1971*.

Procedures on hearings

(6) The provisions of subsections 2 to 5 and subsections 7 and 8 of section 12 apply *mutatis mutandis* to proceedings before the Board under this section.

Powers of Board upon hearing or review

- (7) The Board shall, after the hearing or review,
 - (a) confirm the proposed decision of the registration committee; or
 - (b) require the registration committee to permit the applicant to take qualifying examinations or additional training as a condition for registration, or both as specified by the registration committee; or
 - (c) require the registration committee to direct the Registrar to register the applicant on any appro-

priate register subject to such conditions as the Board considers appropriate in cases where the Board finds that the applicant meets the requirements for registration and that the committee has exercised its powers improperly; or

- (d) refer the matter back to the registration committee for further consideration and the Board may make such recommendations as it considers appropriate in the circumstances.

(8) The registration committee and the applicant or Parties registrant are parties to proceedings before the Board under this section.

(9) Any party to proceedings before the Board under this Appeals section may appeal from its decision or order to the Supreme Court in accordance with the rules of court and the provisions of section 13 apply *mutatis mutandis* as if it were an appeal from a decision or order of a discipline committee.

12.—(1) In proceedings before the discipline committee ^{Parties to discipline proceedings} of a College, the College and the member of the College whose conduct is being investigated in the proceedings are parties to the proceedings.

(2) A member whose conduct is being investigated in ^{Examination of documentary evidence} proceedings before a discipline committee shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which shall be given in evidence at the hearing.

(3) Members of a discipline committee holding a hearing ^{Members holding hearing not to have taken part in investigation, etc.} shall not have taken part before the hearing in any investigation of the subject-matter of the hearing other than as a member of the Council considering the referral of the matter to the discipline committee or at a previous hearing of the committee, and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the committee may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

(4) Notwithstanding anything in *The Statutory Powers Procedure Act, 1971*, hearings of the discipline committee shall be held *in camera*, but, if the person whose conduct is being investigated requests otherwise by a notice delivered to the Registrar before the day fixed for the hearing, the committee shall conduct the hearing in public except where,

(a) matters involving public security may be disclosed; or

(b) the possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public.

Recording of evidence

(5) The oral evidence taken before a discipline committee shall be recorded and, if so required, copies or a transcript thereof shall be furnished only to the parties at their own cost.

Evidence 1971. c. 47

(6) Notwithstanding *The Statutory Powers Procedure Act, 1971* nothing is admissible in evidence before a discipline committee that would be inadmissible in a court in a civil case and the findings of a discipline committee shall be based exclusively on evidence admitted before it.

Only members at hearing to participate in decision

(7) No member of a discipline committee shall participate in a decision of the committee pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties.

Release of documentary evidence

(8) Documents and things put in evidence at a hearing of a discipline committee shall, upon the request of the person who produced them, be released to him by the committee within a reasonable time after the matter in issue has been finally determined.

Appeal to court

13.—(1) Any party to proceedings before a discipline committee may appeal from its decision or order to the Supreme Court in accordance with the rules of court.

Powers of court on appeal

(2) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the committee appealed from and may exercise all powers of the committee and may direct the committee or the College to take any action which the committee or the College may take and as the court considers proper, and for such purposes the court may substitute its opinion for that of the committee, or the court may refer the matter back to the committee for rehearing, in whole or in part, in accordance with such directions as the court considers proper.

Service of notice

14.—(1) Except where otherwise provided, any notice or document required by this Act to be served may be served personally or by prepaid first class mail addressed to the person to whom notice is to be given at his last known address and, where notice is served by mail, the service shall be deemed to have been made on the fifth day after the day of mailing unless the person to whom notice is given establishes that he, acting in good faith, through absence,

accident, illness or other cause beyond his control, did not receive the notice, or did not receive the notice until a later date.

(2) Every member of the Health Disciplines Board and of the discipline committee of a College has power to administer oaths and affirmations for the purposes of any of its proceedings.

15. Any statement containing information from the records required to be kept by a Registrar under any Part of this Act, purporting to be certified by the Registrar under the seal of the College is admissible in evidence in all courts as *prima facie* proof of the facts stated therein without proof of the appointment or signature of the Registrar and without proof of the seal.

16. No action or other proceeding for damages shall be instituted against the Board, a College, a Council, a committee or any member of the Board, Council or committee, or any officers, servants, agents or appointees of the Board, or a College for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act, a regulation or a by-law, or for any neglect or default in the performance or exercise in good faith of such duty or power.

17. No duly registered member of a College is liable to any action arising out of negligence or malpractice in respect of professional services requested or rendered unless such action is commenced within one year from the date when the person commencing the action knew or ought to have known the fact or facts upon which he alleges negligence or malpractice.

18.—(1) Any person who makes or causes to be made any wilful falsification in any matter relating to a register or issues a false certificate or document with respect to registration is guilty of an offence and on summary conviction is liable to a fine of not more than \$5,000.

(2) Any person who wilfully procures or attempts to procure himself to be registered under this Act by knowingly making any false representation or declaration or by making a fraudulent representation or declaration, either orally or in writing, is guilty of an offence and on summary conviction is liable to a fine of not more than \$5,000 and every person knowingly aiding and assisting him therein is guilty of an offence and on summary conviction is liable to a fine of not more than \$5,000.

Onus of
proof
respecting
registration

19. Where registration under this Act is required to permit the lawful doing of any act or thing, if in any prosecution it is proven that the accused has done such act or thing, the burden of proving that he was so registered under this Act rests upon the accused.

PART II

DENTISTRY

Interpre-
tation

20.—(1) In this Part,

- (a) “by-laws” means the by-laws made under this Part;
- (b) “College” means the Royal College of Dental Surgeons of Ontario;
- (c) “Council” means the Council of the College;
- (d) “licence” means a licence for the practice of dentistry issued under this Part;
- (e) “member” means a member of the College;
- (f) “practice of dentistry” means any professional service usually performed by a dentist or a dental surgeon, and includes,
 - (i) the diagnosis or treatment of, and the prescribing, treating or operating for the prevention, alleviation or correction of any disease, pain, deficiency, deformity, defect, lesion, disorder or physical condition of, in or from any human tooth, jaw or adjacent structure or tissue or any injury thereto,
 - (ii) the making, producing, reproducing, constructing, fitting, furnishing, supplying, altering or repairing or prescribing or advising the use of any prosthetic denture, bridge, appliance or thing for any of the purposes indicated in subclause i, to be used in, upon or in connection with any human tooth, jaw or associated structure or tissue or in the treatment of any condition thereof, or replacing, improving or supplementing any human tooth, associated structure or tissue, and
 - (iii) the taking or making, or the giving of advice or assistance or the providing of facilities for

the taking or making of any impression, bite, cast or design preparatory to, or for the purpose of, or with a view to the making, producing, reproducing, constructing, fitting, furnishing, supplying, altering or repairing of any such prosthetic denture, bridge, appliance or thing;

(g) "Registrar" means the Registrar of the College;

(h) "regulations" means the regulations made under this Part.

(2) The practice of dentistry is a health discipline to which ^{Health discipline} Royal College of Dental Surgeons of Ontario ^{Royal College of Dental Surgeons} continued applies.

21.—(1) The Royal College of Dental Surgeons of Ontario ^{Royal College of Dental Surgeons} continued is continued as a body corporate without share capital with power to acquire, hold and dispose of real and personal continued property for the purposes of this Part.

(2) The objects of the College are,

Objects

- (a) to regulate the practice of dentistry and to govern its members in accordance with this Act, the regulations and the by-laws;
- (b) to establish, maintain and develop standards of knowledge and skill among its members;
- (c) to establish, maintain and develop standards of qualification and practice for the practice of dentistry;
- (d) to establish, maintain and develop standards of professional ethics among its members;
- (e) to administer this Part and perform such other duties and exercise such other powers as are imposed or conferred on the College by or under any Act,

in order that the public interest may be served and protected.

22.—(1) Every person licensed by the College is a member ^{Membership} of the College subject to any term, condition or limitation to which the licence is subject.

(2) A member may resign his membership by filing with the Registrar his resignation in writing and his licence is ^{Resignation of} membership thereupon cancelled, subject to the continuing jurisdiction

of the College in respect of any disciplinary action arising out of his professional conduct while a member.

Cancellation
for default
of fees

(3) The Registrar may cancel a licence for non-payment of any fee prescribed by the regulations after giving the member at least two months notice of the default and intention to cancel, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

Council of
College

23.—(1) The Board of Directors of the College is continued as the Council of the College, which shall be the governing body and board of directors of the College and shall manage and administer its affairs.

Composition
of Council

(2) The Council shall be composed of,

- (a) not fewer than nine and not more than twelve persons who are members elected in the number and manner determined by the regulations;
- (b) not fewer than three and not more than five persons who are not members of a Council under this Act or registered or licensed under this Act or any other Act governing a health practice and are appointed by the Lieutenant Governor in Council; and
- (c) one person who is appointed by the faculty of dentistry of each university in Ontario that conducts a course in dentistry and is authorized to grant degrees in dentistry, such person to be appointed from among the members of the faculty.

Remunera-
tion of lay
members

(3) The persons appointed under clause *b* of subsection 2 shall be paid, out of moneys appropriated therefor by the Legislature, such expenses and remuneration as is determined by the Lieutenant Governor in Council.

Expiration
of appoint-
ment

(4) The appointment of every person appointed under subsection 2 expires at the first meeting of the Council following the election of members to Council held next after the effective date of his appointment, and a person whose appointment expires is eligible for reappointment.

Qualifica-
tions to
vote

(5) Every member who,

(a) practises in Ontario; and

(b) is not in default of payment of the annual fee prescribed by the regulations,

is qualified to vote at an election of members of the Council.

(6) The Council shall elect a President and Vice-President ^{President and Vice-President} from among its members.

(7) The Council shall appoint during pleasure a Registrar ^{Registrar, Treasurer, Secretary and staff}, and such other officers and servants as may from time to time be necessary in the opinion of the Council to perform the work of the College.

(8) A majority of the members of the Council constitute ^{Quorum} a quorum.

(9) The members of the Council who were elected under *The Dentistry Act*, being chapter 108 of the Revised Statutes of Ontario, 1970 and were in office immediately before this Part comes into force shall continue in office and shall be deemed to be the members referred to in clause *a* of subsection 2 until the expiration of the term for which they were elected or until the office otherwise becomes vacant. ^{Continuation of Council members under R.S.O. 1970, c. 108}

24. In addition to his powers and duties under Part I, ^{Powers of Minister} the Minister may,

- (a) review the activities of the Council;
- (b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;
- (c) advise the Council with respect to the implementation of this Part and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures.

25. Subject to the approval of the Lieutenant Governor ^{Regulations} in Council and with prior review by the Minister, the Council may make regulations,

- (a) fixing the number of members to be elected to the Council and establishing electoral districts and regional representation for elections;
- (b) respecting and governing the qualifications, nomination, election and term of office of the members to be elected, and controverted elections;
- (c) prescribing the conditions disqualifying elected members from sitting on the Council and governing the filling of vacancies on the Council;
- (d) respecting any matter ancillary to the provisions of this Part with regard to the issuing, suspension and revocation of licences;

- (e) prescribing classes of licences and governing the requirements and qualifications for the issuing of licences or any class thereof and prescribing the terms and conditions thereof;
- (f) providing for the maintenance and inspection of registers of persons permitted to practise;
- (g) governing standards of practice for the profession;
- (h) prescribing the records that shall be kept respecting patients;
- (i) requiring and providing for the inspection and examination of the office, records and equipment of members in connection with their practice;
- (j) regulating the compounding, dispensing and sale of drugs by members and the containers and labelling therefor, prescribing the records that shall be kept and requiring reports to the Minister respecting such compounding, dispensing and sale;
- (k) defining classes of specialists in the various branches of dentistry, prescribing the qualifications required, providing for the suspension or revocation of any such designation, and for the regulation and prohibition of the use of terms, titles, or designations by members indicating specialization in any branch of dentistry;
- (l) authorizing persons other than members to perform specified acts in the practice of dentistry under the supervision or direction of a member;
- (m) prohibiting the practice of dentistry where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
- (n) defining professional misconduct for the purposes of this Part;
- (o) providing for a program of continuing education of members to maintain their standard of competence and requiring members to participate in such continuing education;
- (p) regulating, controlling and prohibiting the use of terms, titles or designations by members or groups

- or associations of members in respect to their practices;
- (q) respecting the reporting and publication of decisions in disciplinary matters;
 - (r) providing for the compilation of statistical information on the supply, distribution and professional activities of members and requiring members to provide the information necessary to compile such statistics, for any purpose that may tend to advance scientific knowledge and maintain the standards of practice of dentistry;
 - (s) respecting the duties and authority of the Registrar;
 - (t) requiring the payment of annual fees by members and fees for licensing, examinations and continuing education, including penalties for late payment, and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof;
 - (u) prescribing forms for the purposes of this Part and providing for their use;
 - (v) providing for the exemption of any member from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable.

26.—(1) The Council may pass by-laws relating to the By-laws administrative and domestic affairs of the College not inconsistent with this Act and the regulations and without limiting the generality of the foregoing,

- (a) prescribing the seal of the College;
- (b) providing for the execution of documents by the College;
- (c) respecting banking and finance;
- (d) fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;
- (e) providing procedures for the election of President and Vice-President of the College, the filling of a vacancy in those offices, and prescribing the duties of the President and Vice-President;

- (f) respecting the calling, holding and conducting of meetings of the Council and the duties of members of Council;
- (g) prescribing the remuneration of the members of the Council and committees, other than persons appointed by the Lieutenant Governor in Council, and providing for the payment of necessary expenses of the Council and committees in the conduct of their business;
- (h) providing for the appointment, composition, powers and duties of such additional or special committees as may be required;
- (i) delegating to the Executive Committee such powers and duties of the Council as are set out in the by-law, other than the power to make, amend or revoke regulations and by-laws;
- (j) providing for a code of ethics;
- (k) providing for the appointment of inspectors for the purposes of this Part;
- (l) prescribing forms and providing for their use;
- (m) providing procedures for the making, amending and revoking of the by-laws;
- (n) respecting management of the property of the College;
- (o) respecting the application of the funds of the College and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;
- (p) providing for the entering into arrangements by the College for its members respecting indemnity for professional liability and respecting the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members and exempting members or any class thereof from all or part of any such levy;
- (q) respecting membership of the College in any national organization with similar functions, the payment of an annual assessment and provision for representatives at meetings;

(r) respecting all of the things that are considered necessary for the attainment of the objects of the College and the efficient conduct of its affairs.

(2) A copy of the by-laws made under subsection 1 and^{Idem} amendments thereto,

(a) shall be forwarded to the Minister;

(b) shall be available for public inspection in the office of the College.

(3) Any by-law or resolution signed by all the members ^{Signing by laws and resolutions} of the Council is as valid and effective as if passed at a meeting of the Council duly called, constituted and held for that purpose.

27.—(1) Where a prosthetic denture is supplied, altered or repaired by a member or under the supervision of a member as set out in subsection 11 of section 4 of *The Denture Therapists Act, 1974*, the laboratory costs incurred in respect of the supplying, altering or repairing of the prosthetic denture and all fees for services in respect thereof shall be rendered by the member and the account therefor shall show such laboratory costs separately from such fees and separately from all other charges and fees.

(2) No person is liable to pay an account to which sub-^{Billing for prosthetic dentures 1974, c....} section 1 applies until the account is made to comply with the requirements of subsection 1.

28.—(1) No person shall engage in or hold himself out as ^{Licence to practise} engaging in the practice of dentistry unless he is licensed under this Part.

(2) For the purposes of subsection 1, proof of the performance of one act in practice of dentistry on one occasion is sufficient to establish engaging in the practice of dentistry.

(3) Subsection 1 does not apply to a student of dentistry ^{Exception re students} who practises dentistry within a prescribed training program under the supervision of a member who is physically present.

(4) Nothing done in the practice of denture therapy or ^{Idem} the practice of supervised denture therapy as defined in *The Denture Therapists Act, 1974* by a denture therapist licensed or provisionally licensed thereunder shall be deemed to be a contravention of this section.

Conflict
with other
health
discipline

(5) A licence shall be deemed to authorize a member to engage in the practice of dentistry, notwithstanding that any part of such practice is included in the practice of any other health discipline.

Application
of Part VI

(6) Part VI does not apply in respect of the compounding and dispensing and sale of drugs by a member for his own patients in accordance with this Part and the regulations.

Establish-
ment of
committees

29.—(1) The Council shall establish and appoint as hereinafter provided the following committees,

- (a) Executive Committee;
- (b) Registration Committee;
- (c) Complaints Committee;
- (d) Discipline Committee,

and may establish such other committees as the Council from time to time considers necessary.

Vacancies

(2) Where one or more vacancies occur in the membership of the Council or any committee, the members remaining in office constitute the Council or committee so long as their number is not fewer than the prescribed quorum.

Executive
Committee

30.—(1) The Executive Committee shall be composed of the President and Vice-President of the Council and not more than three other members of the Council, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

Quorum

(2) A majority of the members of the Executive Committee constitutes a quorum.

Duties

(3) The Executive Committee shall perform such functions of the Council as are delegated to it by the Council, the by-laws or this Part and may take action upon any other matter that requires immediate attention between meetings of the Council, other than to make, amend or revoke a regulation or by-law.

31.—(1) The Registration Committee shall be composed of three persons who are members of the Council, one of whom shall be a person appointed to the Council by the Lieutenant Governor in Council.

(2) The Council shall name one member of the Registration Committee to be Chairman.

(3) A majority of the members of the Registration Committee constitutes a quorum.

32.—(1) The Registrar shall issue a licence to any applicant therefor who is qualified under this Part and the regulations and has passed such examinations as the Council may set or approve, and the Registrar shall refer to the Registration Committee every application for a licence that he proposes to refuse or to which he considers terms, conditions or limitations should be attached.

(2) The Registration Committee,

Powers and duties of Registration Committee

(a) shall determine the eligibility of applicants for licences and may require an applicant to take and pass such additional examinations as the Council may set or approve and pay such fee therefor as the Registration Committee fixes or to take such additional training as the Registration Committee specifies; and

(b) may exempt an applicant from any licensing requirement.

(3) The Registration Committee may direct the Registrar to issue or refuse to issue licences or to issue licences subject to such terms, conditions and limitations as the Committee specifies.

(4) The Registration Committee may review the qualifications of any member and may impose a further term, condition or limitation on his licence pending the demonstration of such standard of competence through the completion of such experience, courses of study, or continuing education as the committee specifies.

(5) The Registrar shall maintain one or more registers in which is entered every person who is licensed to practise dentistry, identifying any specialist status and the terms, conditions and limitations attached to the licence, and shall

note on the register every revocation, suspension and cancellation of a licence or recognition of specialist status and such other information as the Registration Committee or Discipline Committee directs.

Continuation
of licences
R.S.O. 1970,
c. 108

33. Every licence issued under *The Dentistry Act*, being chapter 108 of the Revised Statutes of Ontario, 1970, and in effect immediately before this Part comes into force continues in the same manner as if issued under this Part.

Complaints
Committee

34.—(1) The Complaints Committee shall be composed of three persons who are members of the Council, one of whom shall be a person appointed to the Council by the Lieutenant Governor in Council.

Idem

(2) No person who is a member of the Discipline Committee shall be a member of the Complaints Committee.

Chairman

(3) The Council shall name one member of the Complaints Committee to be its Chairman.

Quorum

(4) A majority of the members of the Complaints Committee constitutes a quorum.

Duties

35.—(1) The Complaints Committee shall consider and investigate complaints made by members of the public or members of the College regarding the conduct or actions of any member of the College, but no action shall be taken by the Committee under subsection 2 unless,

- (a) a written complaint has been filed with the Registrar and the member whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations he may wish to make concerning the matter; and
- (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

Idem

(2) The Committee in accordance with the information it receives may,

- (a) direct that the matter be referred, in whole or in part, to the Discipline Committee or to the Executive Committee for the purposes of section 38; or
- (b) direct that the matter not be referred under clause a; or

(c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Part or the regulations or by-laws.

(3) The Committee shall give its decision in writing to the Registrar for the purposes of section 8 and, where the reasons decision is made under clause b of subsection 2, its reasons therefor.

36.—(1) The Discipline Committee shall be composed of Discipline Committee eight members of the Council of whom two shall be persons appointed to the Council by the Lieutenant Governor in Council.

(2) The Council shall appoint one of the members of the Chairman Discipline Committee to be Chairman.

(3) The Chairman of the Discipline Committee may assign Composition of panels a panel of five members of the Committee to hold a hearing of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

(4) Three members of a panel assigned under subsection 3, Quorum and votes of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum for a hearing and all disciplinary decisions require the vote of a majority of members of the Discipline Committee presiding at the hearing.

(5) Where a panel of the Discipline Committee commences Disability of lay member a hearing and the member thereof who is appointed to the Council by the Lieutenant Governor in Council becomes unable to continue to act, the remaining members may complete the hearing notwithstanding his absence.

(6) Notwithstanding section 35, the Council or the Executive Committee may direct the Discipline Committee to hold a hearing and determine any specified allegation of professional misconduct or incompetence on the part of a member. Reference by Council or Executive Committee

37.—(1) The Discipline Committee shall,

Duties of Discipline Committee

- (a) when so directed by the Council, Executive Committee or Complaints Committee, hear and determine allegations of professional misconduct or incompetence against any member;
- (b) hear and determine matters referred to it under section 35, 36 or 39; and
- (c) perform such other duties as are assigned to it by the Council.

(2) In the case of hearings into allegations of professional misconduct or incompetence, the Discipline Committee shall,

- (a) consider the allegations, hear the evidence and ascertain the facts of the case;
- (b) determine whether upon the evidence and the facts so ascertained the allegations have been proved;
- (c) determine whether in respect of the allegations so proved the member is guilty of professional misconduct or incompetence;
- (d) determine the penalty to be imposed as hereinafter provided in cases in which it finds the member guilty of professional misconduct or of incompetence.

Professional misconduct

(3) A member may be found guilty of professional misconduct by the Committee if,

- (a) he has been found guilty of an offence relevant to his suitability to practise upon proof of such conviction;
- (b) he has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.

Incompetence

(4) The Discipline Committee may find a member to be incompetent if in its opinion he has displayed in his professional care of a patient a lack of knowledge, skill or judgment or disregard for the welfare of the patient of a nature or to an extent that demonstrates he is unfit to continue in practice.

Powers of Discipline Committee

(5) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence it may by order,

- (a) revoke the licence of the member or withdraw recognition of his specialist status, or both;
- (b) suspend the licence of the member or recognition of his specialist status, or both, for a stated period;
- (c) impose such restrictions on the licence of the member for such a period and subject to such conditions as the Committee designates;
- (d) reprimand the member, and if deemed warranted, direct that the fact of such reprimand be recorded on the register;
- (e) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates,

or any combination thereof.

(6) Where the Discipline Committee is of the opinion ^{Costs} that the commencement of the proceedings was unwarranted, the Committee may order that the College reimburse the member for his costs or such portion thereof as the Discipline Committee fixes.

(7) Where the Discipline Committee revokes, suspends or ^{Stay on appeal or incor} restricts a licence or recognition of specialist status on the ^{petence} grounds of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

(8) Where the Discipline Committee revokes, suspends or ^{Stay on appeal for professional misconduct} restricts the licence or recognition of specialist status of a member on a ground other than for incompetence, the order shall not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned.

(9) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence, a copy of the ^{Service of decision of Discipline Committee} decision shall be served upon the person complaining in respect of the conduct or action of the member.

(10) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his term of office had not expired or been terminated.

38.—(1) In this section,

(a) “board of inquiry” means a board of inquiry appointed by the Executive Committee under sub-section 2;

(b) “incapacitated member” means a member suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member that he no longer be permitted to practise or that his practice be restricted.

(2) Where the Registrar receives information leading him ^{Reference to board of inquiry} to believe that a member may be an incapacitated member, he shall make such inquiry as he considers appropriate and report to the Executive Committee who may, upon notice to

the member, appoint a board of inquiry composed of at least two members of the College and one member of the Council appointed thereto by the Lieutenant Governor in Council who shall inquire into the matter.

Examination

(3) The board of inquiry shall make such inquiries as it considers appropriate and may require the member to submit to physical or mental examination by such qualified person as the board designates and if the member refuses or fails to submit to such examination the board may order that his licence be suspended until he complies.

Hearing by Registration Committee

(4) The board of inquiry shall report its findings to the Executive Committee and deliver a copy thereof and a copy of any medical report obtained under subsection 3 to the member about whom the report is made and if, in the opinion of the Executive Committee, the evidence so warrants, the Executive Committee shall refer the matter to the Registration Committee to hold a hearing and may suspend the member's licence until the determination of the question of his capacity becomes final.

Parties

(5) The College, the person whose capacity is being investigated and any other person specified by the Registration Committee are parties to the hearing.

Medical evidence

(6) A legally qualified medical practitioner is not compellable to produce at the hearing his case histories, notes or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment and such report shall be signed by him and served upon the other parties to the proceedings,

- (a) where the evidence is required by the College, at least five days before the hearing commences; and
- (b) where the evidence is required by the person about whom the report is made, at least five days before its introduction as evidence,

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

Powers of Registration Committee

- (7) The Registration Committee shall, after the hearing,
 - (a) make a finding as to whether or not the member is an incapacitated member; and

- (b) where the member is found to be an incapacitated member by order,
- (i) revoke his licence,
 - (ii) suspend his licence for such period as the Committee considers appropriate, or
 - (iii) attach such terms and conditions to the licence as the Committee considers appropriate.

(8) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration and appeals therefrom apply, *mutatis mutandis*, to proceedings of the Registration Committee under this section, except that the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

39.—(1) A person whose licence has been revoked or suspended for cause under this Part, or a predecessor of this Part, may apply in writing to the Registrar for the issuance of a licence or removal of the suspension, but such application shall not be made sooner than one year after the revocation or, where the suspension is for more than one year, one year after the suspension.

(2) The Registrar shall refer the application to the Discipline Committee or, where the revocation or suspension was on the grounds of incapacity, to the Registration Committee which shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Council and to the former member.

(3) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration except subsection 9 of section 11 apply, *mutatis mutandis*, to proceedings of the Registration Committee and Discipline Committee under this section.

40.—(1) Where the Registrar believes on reasonable and probable grounds that a member has committed an act of professional misconduct or incompetence, the Registrar may by order appoint one or more persons to make an investigation to ascertain whether such an act has occurred, and the person appointed shall report the result of his investigation to the Registrar.

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make

1971, c. 49

the investigation may inquire into and examine the practice of the member in respect of whom the investigation is being made and may, upon production of his appointment, enter at any reasonable time the business premises of such person and examine books, records, documents and things relevant to the subject-matter of the investigation, and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to such inquiry as if it were an inquiry under that Act.

Obstruction
of
investigator

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation.

Search
warrant

(4) Where a provincial judge is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the provincial judge may, whether or not an inspection has been made or attempted under subsection 2, issue an order authorizing the person making the investigation, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the provincial judge, by the order, authorizes the person making the investigation to make the search at night.

Removal of
books, etc.

(5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, records, documents or things examined under subsection 2 or 4 relating to the member whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, records or documents, but such copying shall be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member whose practice is being investigated.

Admissi-
bility
of copies

(6) Any copy made as provided in subsection 5 and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding

or prosecution as *prima facie* proof of the original book, record or document and its contents.

(7) The Registrar shall report the results of the investigation to the Council or the Executive Committee or such other Committee as he considers appropriate. Report of Registrar

41.—(1) Every person employed in the administration of this Part, including any person making an inquiry or investigation under section 40 and any member of the Council or a Committee, shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry or investigation under section 40 and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Part and the regulations and by-laws or any proceedings under this Part or the regulations;
- (b) as may be required for the enforcement of *The Health Insurance Act, 1972*;
- (c) to his counsel; or
- (d) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry or investigation except in a proceeding under this Part or the regulations or by-laws. Testimony in civil suit

42.—(1) Where it appears to the College that any person does not comply with any provision of this Part or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the College may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit. Restraining orders

(2) An appeal lies to the Supreme Court from an order made under subsection 1. Appeal

Penalties

43.—(1) Every person who is in contravention of section 28 is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both.

Idem

(2) Every person who, not being a member, uses an occupational designation prescribed by the regulations to be used by members or a like designation is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$1,000 and for each subsequent offence to a fine of not more than \$2,000.

Idem

(3) Any person who obstructs a person appointed to make an investigation under section 40 in the course of his duties is guilty of an offence and on summary conviction is liable to a fine not exceeding \$2,000.

Repeals

44.—(1) *The Dentistry Act*, being chapter 108 of the Revised Statutes of Ontario, 1970, except section 12 thereof, *The Dentistry Amendment Act, 1972*, being chapter 141 and *The Dentistry Amendment Act, 1974*, being chapter . . ., are repealed.

Idem

(2) For the purposes of section 12 of *The Dentistry Act*, the Council shall be deemed to be the Board referred to therein.

References

(3) Any reference in any Act or regulation to *The Dentistry Act* shall be deemed to be a reference to this Part.

PART III

MEDICINE

Interpre-
tation

45.—(1) In this Part,

- (a) “by-laws” means the by-laws made under this Part;
- (b) “College” means the College of Physicians and Surgeons of Ontario;
- (c) “Council” means the Council of the College;
- (d) “licence” means a licence for the practice of medicine issued under this Part;
- (e) “member” means a member of the College;

- (f) "practice of medicine" includes the practice of surgery and obstetrics;
- (g) "prescribed" means prescribed by the regulations or by-laws made under this Part;
- (h) "Registrar" means the Registrar of the College;
- (i) "regulations" means the regulations made under this Part.

(2) The practice of medicine is a health discipline to which ^{Health discipline} this Part applies.

46.—(1) The College of Physicians and Surgeons of Ontario ^{College of Physicians and Surgeons continued} is continued as a body corporate without share capital with power to acquire, hold and dispose of real and personal property for the purposes of this Part.

(2) The objects of the College are,

Objects

- (a) to regulate the practice of medicine and to govern its members in accordance with this Act, the regulations and the by-laws;
- (b) to establish, maintain and develop standards of knowledge and skill among its members;
- (c) to establish, maintain and develop standards of qualification and practice for the practice of medicine;
- (d) to establish, maintain and develop standards of professional ethics among its members;
- (e) to administer this Part and perform such other duties and exercise such other powers as are imposed or conferred on the College by or under any Act;
- (f) such other objects relating to human health care as the Council considers desirable,

in order that the public interest may be served and protected.

47.—(1) Every person licensed by the College is a member ^{Membership in the College} of the College subject to any term, condition or limitation to which the licence is subject.

(2) A member may resign his membership by filing with ^{Resignation of membership} the Registrar his resignation in writing and his licence is thereupon cancelled subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

Cancellation
for default
of fees

(3) The Registrar may cancel a licence for non-payment of any prescribed fee after giving the member at least two months notice of the default and intention to cancel subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct as a member.

Council of
the College

48.—(1) The Council of the College is continued and shall be the governing body and board of directors of the College and shall manage and administer its affairs.

Composition
of Council

(2) The Council shall be composed of,

- (a) one person who is appointed by the faculty of medicine of each university in Ontario that conducts a course in medicine and is authorized to grant degrees in medicine, such person to be appointed from among the members of the faculty;
- (b) not fewer than four and not more than six persons who are not members of a Council under this Act or registered or licensed under this Act or any other Act governing a health practice, and are appointed by the Lieutenant Governor in Council; and
- (c) not fewer than twelve and not more than sixteen persons who are members and are elected by the members in the manner provided by the regulations.

Remuner-
ation
of lay
members

(3) The persons appointed under clause b of subsection 2 shall be paid out of moneys appropriated therefor by the Legislature such expenses and remuneration as is determined by the Lieutenant Governor in Council.

Expiration
of appoint-
ment

(4) The appointment of every person appointed under subsection 2 expires at the first regular meeting of the Council following the election of members to Council held next after the effective date of his appointment, and a person whose appointment expires is eligible for reappointment.

Qualifi-
cations
to vote

(5) Every member who is,

- (a) resident in Ontario;
- (b) licensed to practise medicine and not limited to practising for educational purposes only; and
- (c) not in default of payment of the prescribed annual fee,

is qualified to vote at an election of members of the Council.

(6) The Council shall elect annually a President and Vice-President from among its members. President
Vice-
President

(7) The Council shall appoint during pleasure a Registrar and such other officers and servants as may from time to time be necessary or desirable in the opinion of the Council to perform the work of the College. Registrar
and
officers

(8) A majority of the members of the Council constitutes Quorum a quorum.

(9) The members of the Council who were elected under *The Medical Act*, being chapter 268 of the Revised Statutes of Ontario, 1970 and were in office immediately before this Part comes into force shall continue in office and shall be deemed to be the members referred to in clause *c* of subsection 2 until the expiration of the term for which they were elected or until the office otherwise becomes vacant. Continuation
of Council
members
under
R.S.O. 1970,
c. 268

49. In addition to his powers and duties under Part I, Powers of
Minister the Minister may,

- (a) review the activities of the Council;
- (b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;
- (c) advise the Council with respect to the implementation of this Part and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures.

50. Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations, Regulations

- (a) fixing the number of members to be elected to the Council and establishing electoral districts for elections;
- (b) respecting and governing the qualifications, nomination, election and term of office of the members to be elected to the Council, and controverted elections;
- (c) prescribing the conditions disqualifying elected members from sitting on the Council and governing the filling of vacancies on the Council;

- (d) respecting any matter ancillary to the provisions of this Part with regard to the issuing, suspension and revocation of licences;
- (e) prescribing classes of licences and governing the requirements and qualifications for the issuing of licences or any class thereof and prescribing the terms and conditions thereof;
- (f) providing for the maintenance and inspection of registers of persons permitted to practise and for the issuance of certificates of standing by the Registrar;
- (g) governing standards of practice for the profession;
- (h) defining classes of specialists in the various branches of medicine, prescribing the qualifications required, providing for the suspension or revocation of any such designation, and for the regulation and prohibition of the use of terms, titles, or designations by members indicating specialization in any branch of medicine;
- (i) regulating the compounding, dispensing and sale of drugs by members and the containers and labelling therefor, prescribing the records that shall be kept and requiring reports to the Minister respecting such compounding, dispensing and sale;
- (j) governing the designation of life members of the College and prescribing their rights and privileges;
- (k) authorizing persons other than members to perform specified acts in the practice of medicine under the supervision or direction of a member;
- (l) prohibiting the practice of medicine where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
- (m) defining professional misconduct for the purposes of this Part;
- (n) providing for a program of continuing education of members to maintain their standard of competence and requiring members to participate in such continuing education;
- (o) regulating, controlling and prohibiting the use of terms, titles or designations by members or groups or associations of members in respect of their practices;

- (p) prescribing the minimum number of members who may constitute a clinic and the minimum range of medical services that shall be provided in a clinic;
- (q) respecting the reporting and publication of decisions in disciplinary matters;
- (r) requiring and providing for the inspection and examination of books, accounts, reports and medical records of members in connection with their practice;
- (s) providing for the compilation of statistical information on the supply, distribution and professional activities of members and requiring members to provide the information necessary to compile such statistics;
- (t) respecting the duties and authority of the Registrar;
- (u) requiring the payment of fees by members and fees for licensing, examinations and continuing education, including penalties for late payment and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof;
- (v) prescribing forms and providing for their use;
- (w) providing for the exemption of any member from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable.

51.—(1) The Council may pass by-laws relating to the ^{By-laws} administrative and domestic affairs of the College not inconsistent with this Act and the regulations and without limiting the generality of the foregoing,

- (a) prescribing the seal of the College;
- (b) providing for the execution of documents by the College;
- (c) respecting banking and finance;
- (d) fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;
- (e) providing procedures for the election of President and Vice-President of the College, the filling of a vacancy in those offices, and prescribing the duties of the President and Vice-President;
- (f) respecting the calling, holding and conducting of meetings of the Council and the duties of members of Council;

- (g) respecting the calling, holding and conducting of meetings of the membership of the College;
- (h) prescribing the remuneration of the members of the Council and committees other than persons appointed by the Lieutenant Governor in Council and providing for the payment of necessary expenses of the Council and committees in the conduct of their business;
- (i) providing for the appointment, composition, powers and duties of such additional or special committees as may be required;
- (j) delegating to the Executive Committee such powers and duties of the Council as are set out in the by-law, other than the power to make, amend or revoke regulations and by-laws;
- (k) providing for a code of ethics;
- (l) prescribing forms and providing for their use;
- (m) providing procedures for the making, amending and revoking of the by-laws;
- (n) respecting management of the property of the College;
- (o) respecting the application of the funds of the College and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;
- (p) providing for the entering into arrangements by the College for its members respecting indemnity for professional liability and respecting the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members and exempting members or any class thereof from all or part of any such levy;
- (q) providing for the establishment, maintenance and administration of a benevolent fund for needy practitioners in Ontario and the dependants of deceased members;
- (r) respecting membership of the College in a national organization with similar functions, the payment of an annual assessment and provision for representatives at meetings;
- (s) respecting all of the things that are considered necessary for the attainment of the objects of the College and the efficient conduct of its affairs.

(2) A copy of the by-laws made under subsection 1 and ~~Idem~~ amendments thereto,

- (a) shall be forwarded to the Minister;
- (b) shall be forwarded to each member; and
- (c) shall be available for public inspection in the office of the College.

(3) Any by-law or resolution signed by all members of the Council is as valid and effective as if passed at a meeting of the Council duly called, constituted and held for the purpose.

52.—(1) No person shall engage in or hold himself out as engaging in the practice of medicine unless he is licensed under this Part.

(2) For the purposes of subsection 1,

Exceptions

- (a) rendering first aid or temporary assistance in an emergency without fee; or
- (b) the administration of household remedies by members of the patient's household,

shall be deemed not to be engaging in the practice of medicine.

 (3) Subsection 1 does not apply to a student of medicine engaging in a curriculum of studies at a medical school in a university in Ontario. 

(4) For the purposes of this section, proof of the performance of one act in practice of medicine on one occasion is sufficient to establish engaging in the practice of medicine.

 (5) A member or person authorized by the regulations may engage in the practice of medicine, notwithstanding that any part of such practice is included in the practice of any other health discipline.

 (6) Part VI does not apply in respect of the compounding and dispensing and sale of drugs by a member for his own patients in accordance with this Part and the regulations.

(7) Nothing in this Part shall be construed to affect the treatment of human ailments by the use of prayer or spiritual means in the exercise of a religion in accordance with the tenets of an established church by the members thereof.

53.—(1) The Council shall establish and appoint as herein-after provided the following committees,

- (a) Executive Committee;
- (b) Registration Committee;

Establishment of committees

- (c) Complaints Committee;
- (d) Discipline Committee;
- (e) Fitness to Practise Committee,

and may establish such other committees as the Council from time to time considers necessary.

Medical
Review
Committee
1972, c. 91

(2) The Council may give the Medical Review Committee established under *The Health Insurance Act, 1972*, such other duties as the Council considers appropriate and that are not inconsistent with its duties under that Act.

Vacancies

(3) Where one or more vacancies occur in the membership of the Council or any committee, the members remaining in office constitute the Council or committee so long as their number is not fewer than the prescribed quorum.

Executive
Committee

54.—(1) The Executive Committee shall be composed of,

- (a) the President, who shall be Chairman of the Committee;
- (b) the Vice-President; and
- (c) three persons who are members of the Council, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

Quorum

(2) A majority of the members of the Executive Committee constitutes a quorum.

Duties

(3) The Executive Committee shall perform such functions of the Council as are delegated to it by the Council, the by-laws or this Part and, subject to ratification by the Council at its next ensuing meeting, may take action upon any other matter that requires immediate attention between meetings of the Council, other than to make, amend or revoke a regulation or by-law.

Regis-
tration
Committee

55.—(1) The Registration Committee shall be composed of,

- (a) one member of the Council who was appointed to the Council by a university;
- (b) two members of the Council who were elected to the Council;
- (c) one member of the Council who was appointed to the Council by the Lieutenant Governor in Council; and
- (d) the President and Vice-President, *ex officio*.

(2) The Council shall name one member of the Registration Committee to be Chairman.

(3) A majority of the members of the Registration Committee constitutes a quorum.

56.—(1) The Registrar shall issue a licence to any applicant therefor who is qualified under this Part and the regulations and has passed such examinations as the Council may set or approve, and the Registrar shall refer to the Registration Committee every application for a licence that he proposes to refuse or to which he considers terms, conditions or limitations should be attached.

(2) The Registration Committee,

- (a) shall determine the eligibility of applicants for licences and may require an applicant to take and pass such additional examinations as the Council may set or approve and pay such fees therefor as the Registration Committee fixes or to take such additional training as the Registration Committee specifies; and
- (b) may exempt an applicant from any licensing requirement

(3) The Registration Committee may direct the Registrar to issue or refuse to issue licences or to issue licences subject to such terms, conditions and limitations as the Committee specifies.

(4) The Registration Committee may review the qualifications of any member and may impose a further term, condition or limitation on his licence pending the demonstration of such standard of competence through the completion of such experience, courses of study or continuing education as the Committee specifies.

(5) The Registrar shall maintain one or more registers which is entered every person who is licensed to practise medicine, identifying any specialist status and the terms, conditions and limitations attached to the licence, and shall note on the register every revocation, suspension and cancellation of a licence or recognition of specialist status and such other information as the Registration Committee or Discipline Committee directs.

(6) Every licence issued under *The Medical Act*, being chapter 268 of the Revised Statutes of Ontario, 1970 and in effect immediately before this Part comes into force continues in the same manner as if issued under this Part.

57.—(1) The Complaints Committee shall be composed of two persons who are members of the College;

(b) one member of the Council who was appointed to the Council by a university;

(c) one member of the Council who was appointed to the Council by the Lieutenant Governor in Council.

Idem (2) No person who is a member of the Discipline Committee shall be a member of the Complaints Committee.

Chairman (3) The Council shall name one member of the Complaints Committee to be its Chairman.

Quorum (4) A majority of the members of the Complaints Committee constitutes a quorum.

Duties **58.**—(1) The Complaints Committee shall consider and investigate complaints made by members of the public or members of the College regarding the conduct or actions of any member of the College, but no action shall be taken by the Committee under subsection 2 unless,

(a) a written complaint has been filed with the Registrar and the member whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations he may wish to make concerning the matter; and

(b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

Idem (2) The Committee in accordance with the information it receives may,

(a) direct that the matter be referred, in whole or in part, to the Discipline Committee or to the Executive Committee for the purposes of section 62; or

(b) direct that the matter not be referred under clause *a*; or

(c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Part or the regulations or by-laws.

(3) The Committee shall give its decision in writing to the Registrar for the purposes of section 8 and, where the decision is made under clause *b* of subsection 2, its reasons therefor.

**Decision
and
reasons**

**Discipline
Committee**

59.—(1) The Discipline Committee shall be composed of ten members of the Council of whom two shall be persons appointed to the Council by the Lieutenant Governor in Council.

(2) The Council shall appoint one of the members of the Chairman Discipline Committee to be Chairman.

(3) The Chairman of the Discipline Committee may assign ^{Composition of panels} a panel of five members of the Committee to hold a hearing of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

 (4) Where a panel of the Discipline Committee commences ^{Disability of lay member} a hearing and the member thereof who is appointed to the Council by the Lieutenant Governor in Council becomes unable to continue to act, the remaining members may complete the  hearing notwithstanding his absence.

(5) Three members of a panel assigned under subsection 3, ^{Quorum and votes} of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum for a hearing and all disciplinary decisions require the vote of a majority of members of the Discipline Committee presiding at the hearing, but in the event of a tie vote the chairman shall have a second or casting vote.

(6) Notwithstanding section 58, the Council or the Executive Committee may direct the Discipline Committee to hold a ^{Reference by Council or Executive Committee} hearing and determine any specified allegation of professional misconduct or incompetence on the part of a member.

60.—(1) The Discipline Committee shall,

^{Duties of Discipline Committee}

- (a) when so directed by the Council, Executive Committee or Complaints Committee, hear and determine allegations of professional misconduct or incompetence against any member;
- (b) hear and determine matters referred to it under section 58, 59 or 63; and
- (c) perform such other duties as are assigned to it by the Council.

(2) In the case of hearings into allegations of professional ^{Idem} misconduct or incompetence, the Discipline Committee shall,

- (a) consider the allegations, hear the evidence and ascertain the facts of the case;
- (b) determine whether upon the evidence and the facts so ascertained the allegations have been proved;
- (c) determine whether in respect of the allegations so proved the member is guilty of professional misconduct or incompetence;
- (d) determine the penalty to be imposed as hereinafter provided in cases in which it finds the member guilty of professional misconduct or of incompetence.

Professional misconduct

(3) A member may be found guilty of professional misconduct by the Committee if,

- (a) he has been found guilty of an offence relevant to his suitability to practise, upon proof of such conviction;
- (b) if his rights or privileges under the *Narcotic Control Act* (Canada) or the *Food and Drugs Act* (Canada) or the regulations under either of them have been restricted or withdrawn, unless by his own request, upon proof thereof;
- (c) he has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.

In-competence

(4) The Discipline Committee may find a member to be incompetent if in its opinion he has displayed in his professional care of a patient a lack of knowledge, skill or judgement or disregard for the welfare of the patient of a nature or to an extent that demonstrates he is unfit to continue in practice.

Powers of Discipline Committee

(5) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence it may by order,

- (a) revoke the licence of the member, or withdraw recognition of his specialist status, or both;
- (b) suspend the licence of the member or recognition of his specialist status, or both, for a stated period;
- (c) impose such restrictions on the licence of the member for such a period and subject to such conditions as the Committee designates;
- (d) reprimand the member, and if deemed warranted, direct that the fact of such reprimand be recorded on the register;
- (e) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates,

or any combination thereof.

Costs

(6) Where the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee may order that the College reimburse the member for his costs or such portion thereof as the Discipline Committee fixes.

(7) Where the Discipline Committee revokes, suspends or ^{Stay on appeal for} restricts a licence or recognition of specialist status on the incompetence grounds of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

(8) Where the Discipline Committee revokes, suspends or ^{Stay on appeal for} restricts the licence or recognition of specialist status of a member on grounds other than for incompetence, the order shall not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned.

(9) Where the Discipline Committee finds a member guilty ^{Service of decision of} of professional misconduct or incompetence, a copy of the Discipline Committee decision shall be served upon the person complaining in respect of the conduct or action of the member.

(10) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his term of office had not expired or been terminated.

61.—(1) The Fitness to Practise Committee shall be composed of twelve persons, of whom at least four shall be members of the Council and eight may be members of the College who are not members of the Council.

(2) The Council shall appoint one of the members of the ^{Chairman} Fitness to Practise Committee who is a member of the Council to be chairman of the Committee.

(3) The chairman of the Fitness to Practise Committee ^{Composition of panels and} may assign a panel of three members to hold a hearing, of quorum whom at least one shall be a member who is a member of the Council, and such panel constitutes a quorum of the Committee for a hearing.

(4) All decisions of the Fitness to Practise Committee ^{Votes} require the vote of a majority of the members presiding at the hearing.

62.—(1) In this section,

^{Interpre-}
^{tion}

(a) “board of inquiry” means a board of inquiry appointed by the Executive Committee under subsection 2;

(b) "incapacitated member" means a member suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member that he no longer be permitted to practise or that his practice be restricted.

Reference to board of inquiry

(2) Where the Registrar receives information leading him to believe that a member may be an incapacitated member, he shall make such inquiry as he considers appropriate and report to the Executive Committee who may, upon notice to the member, appoint a board of inquiry composed of at least two members of the College and one member of the Council appointed thereto by the Lieutenant Governor in Council who shall inquire into the matter.

Examination

(3) The board of inquiry shall make such inquiries as it considers appropriate and may require the member to submit to physical or mental examination by such qualified person as the board designates and if the member refuses or fails to submit to such examination the board may order that his licence be suspended until he complies.

Hearing by Fitness to Practise Committee

(4) The board of inquiry shall report its findings to the Executive Committee and deliver a copy thereof and a copy of any medical report obtained under subsection 3 to the member about whom the report is made and if, in the opinion of the Executive Committee, the evidence so warrants, the Executive Committee shall refer the matter to the Fitness to Practise Committee to hold a hearing and may suspend the member's licence until the determination of the question of his capacity becomes final.

Parties

(5) The College, the person whose capacity is being investigated and any other person specified by the Fitness to Practise Committee are parties to the hearing.

Medical evidence

(6) A legally qualified medical practitioner is not compellable to produce at the hearing his case histories, notes or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment and such report shall be signed by him and served upon the other parties to the proceedings,

(a) where the evidence is required by the College, at least five days before the hearing commences; and

(b) where the evidence is required by the person about whom the report is made, at least five days before its introduction as evidence,

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

(7) The Fitness to Practise Committee shall, after the hearing,^{Powers of Fitness to Practise Committee}

- (a) make a finding as to whether or not the member is an incapacitated member; and
- (b) where the member is found to be an incapacitated member, by order,
 - (i) revoke his licence,
 - (ii) suspend his licence for such period as the Committee considers appropriate, or
 - (iii) attach such terms and conditions to the licence as the Committee considers appropriate.

(8) The provisions of Part I and this Part applying to Procedures proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration and appeals therefrom apply, *mutatis mutandis*, to proceedings of the Fitness to Practise Committee under this section, except that the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

63.—(1) A person whose licence has been revoked or suspended for cause under this Part, or under a predecessor of this Part, may apply in writing to the Registrar for the issuance of a licence or removal of the suspension, but such application shall not be made sooner than one year after the revocation or, where the suspension is for a period of more than one year, one year after the suspension.^{Restoration of licence}

(2) The Registrar shall refer the application to the Discipline Committee, or, when the revocation or suspension was on the grounds of incapacity, to the Fitness to Practise Committee, which shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Council and to the former member.^{Reference to Discipline Committee}

(3) The provisions of Part I and this Part applying to Procedures proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration, except

subsection 9 of section 11, apply, *mutatis mutandis*, to proceedings of the Fitness to Practise Committee and Discipline Committee under this section.

Direction
by Council
to issue
licence

(4) Notwithstanding subsections 1, 2 and 3, the Council or the Executive Committee may direct at any time that a licence be issued to a person whose licence has previously been revoked for cause or a suspension for cause be removed, subject to such terms, conditions or limitations as the Council or Executive Committee, as the case may be, considers appropriate.

Investiga-
tion of
members

64.—(1) Where the Registrar believes on reasonable and probable grounds that a member has committed an act of professional misconduct or incompetence the Registrar may, with the approval of the Executive Committee, by order appoint one or more persons to make an investigation to ascertain whether such act has occurred, and the person appointed shall report the result of his investigation to the Registrar.

Powers of
investigator

1971, c. 49

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the practice of the member in respect of whom the investigation is being made and may upon production of his appointment, enter at any reasonable time the business premises of such person and examine books, records, documents and things relevant to the subject-matter of the investigation and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to such inquiry as if it were an inquiry under that Act.

Obstruction
of
investigator

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation.

Search
warrant

(4) Where a provincial judge is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investiga-

tion, the provincial judge may, whether or not an inspection has been made or attempted under subsection 2, issue an order authorizing the person making the investigation, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the provincial judge, by the order, authorizes the person making the investigation to make the search at night.

(5) Any person making an investigation under this section^{Removal of books, etc.} may, upon giving a receipt therefor, remove any books, records, documents or things examined under subsection 2 or 4 relating to the member whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, records or documents, but such copying shall be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member whose practice is being investigated.

(6) Any copy made as provided in subsection 5 and certified to be a true copy by the person making the investigation^{Admissibility of copies} is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, record or document and its contents.

(7) The Registrar shall report the results of the investigation^{Report of Registrar} to the Council or the Executive Committee or to such other committee as he considers appropriate.

65.—(1) Every person employed in the administration of this Part, including any person making an inquiry or investigation under section 64, and any member of the Council or a Committee, shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry or investigation under section 64 and shall not communicate any such matters to any other person except,

(a) as may be required in connection with the administration of this Part and the regulations and by-laws or any proceedings under this Part or the regulations; or

(b) as may be required for the enforcement of *The Health Insurance Act, 1972*,^{1972, c. 91}

- (c) to his counsel; or
- (d) with the consent of the person to whom the information relates.

Testimony
in civil
suit

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry or investigation except in a proceeding under this Part or the regulations or by-laws.

Restraining
orders

66.—(1) Where it appears to the College that any person does not comply with any provision of this Part or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the College may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

Appeal

(2) An appeal lies to the Supreme Court from an order made under subsection 1.

Penalties

67.—(1) Every person who is in contravention of section 52 is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$2,000 and for each subsequent offence to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both.

'Idem

(2) Every person who not being a member uses an occupational designation prescribed by the regulations to be used by members or a like designation is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$1,000 and for each subsequent offence to a fine of not more than \$2,000.

Idem

(3) Any person who obstructs a person appointed to make an investigation under section 64 in the course of his duties is guilty of an offence and on summary conviction is liable to a fine not exceeding \$2,000.

Repeals

68.—(1) *The Medical Act*, being chapter 268 of the Revised Statutes of Ontario, 1970, and *The Medical Amendment Act, 1973*, being chapter 129, are repealed.

References

(2) Any reference in any Act or regulation to *The Medical Act* shall be deemed to be a reference to this Part.

PART IV

NURSING

69.—(1) In this Part,Interpre-
tation

- (a) “by-laws” means the by-laws made under this Part;
- (b) “certificate” means a current certificate issued under this Part authorizing the holder to hold himself out as competent to practise as a registered nurse or registered nursing assistant;
- (c) “College” means the College of Nurses of Ontario;
- (d) “Council” means the Council of the College;
- (e) “Director” means the Director of the College;
- (f) “member” means a member of the College;
- (g) “register” means a register maintained by the Director under this Part, and “registered” and “registration” have corresponding meanings;
- (h) “registered nurse” and “registered nursing assistant” means a person who is the holder of a certificate as a registered nurse or registered nursing assistant, respectively;
- (i) “regulations” means the regulations made under this Part.

(2) The performance of nursing services by a registered ^{Health discipline} nurse or a registered nursing assistant is a health discipline to which this Part applies.

70.—(1) The College of Nurses of Ontario is continued as a body corporate without share capital with power to acquire, hold and dispose of real and personal property for the purposes of this Part. <sup>College of
Nurses of
Ontario
continued</sup>

(2) The objects of the College are,

Objects

- (a) to regulate the practice of nursing and to govern its members in accordance with this Act, the regulations and the by-laws;
- (b) to establish, maintain and develop standards of knowledge and skill among its members;

- (c) to establish, maintain and develop standards of qualification and practice for the practice of nursing;
- (d) to establish, maintain and develop standards of professional ethics among its members;
- (e) to administer this Part and perform such other duties and exercise such other powers as are imposed or conferred on the College by or under any Act;
- (f) such other objects relating to human health care as the Council considers desirable,

in order that the public interest may be served and protected.

**Membership
in the
College**

71.—(1) Every person who is the holder of a certificate is a member of the College subject to any term, condition or limitation to which his certificate is subject.

**Resignation
of member-
ship**

(2) A member may resign his membership by filing with the Director his resignation in writing and his certificate is thereupon cancelled, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

**Cancellation
for default
of fees**

(3) The Director may cancel a certificate for non-payment of any prescribed fee after giving the member at least one month's notice of the default and intention to cancel, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

**Council of
the College**

72.—(1) The Council of the College is continued and shall be the governing body and board of directors of the College and shall manage and administer its affairs.

**Composition
of Council**

(2) The Council shall be composed of,

(a) not fewer than eighteen and not more than twenty-five persons, consisting of registered nurses and registered nursing assistants in the proportions determined by the regulations, who are resident or employed in Ontario and are elected by the members in the manner provided by the regulations; and

(b) not fewer than six and not more than eight persons who are not members of a Council under this Act or registered or licensed under this Act or any other Act governing a health practice, and who are appointed by the Lieutenant Governor in Council.

**Remunera-
tion of lay
appointees**

(3) The persons appointed under clause *b* of subsection 2 shall be paid out of moneys appropriated therefor by the Legislature such expenses and remuneration as is determined by the Lieutenant Governor in Council.

(4) The appointment of every person appointed under subsection 2 expires at the first regular meeting of the Council following the election of members to Council held next after the effective date of his appointment, and a person whose appointment expires is eligible for reappointment.

(5) Every member who is,

(a) resident or employed in Ontario; and

(b) not in default of payment of the annual fee prescribed by the regulations,

Qualifications to vote

is qualified to vote at an election of members of the Council.

(6) The Council shall elect annually a President and Vice-President from among its members.

(7) The Council shall appoint during pleasure a Director and such other officers as may from time to time be necessary in the opinion of the Council to perform the work of the College and the Director shall be deemed to be the Registrar for the purposes of Part I.

(8) The Council shall meet at least twice a year.

Meetings of Council

(9) A majority of the members of the Council constitutes a quorum.

(10) The members of the Council who were elected under *The Nurses Act*, being chapter 301 of the Revised Statutes of Ontario, 1970 and were in office immediately before this Part comes into force shall continue in office and shall be deemed to be the members referred to in clause *a* of subsection 2 until the expiration of the term for which they were elected or until the office otherwise becomes vacant.

73. In addition to his powers and duties under Part I, the Minister may,

(a) review the activities of the Council;

(b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;

(c) advise the Council with respect to the implementation of this Part and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures.

Regulations

74. Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations,

- (a) fixing the number of members to be elected to the Council, the proportions thereof who shall be registered nurses and registered nursing assistants and establishing the regional and other representation for elections;
- (b) respecting and governing the nomination, election and term of office of the members to be elected to the Council, the filling of vacancies on the Council and controverted elections;
- (c) respecting any matter ancillary to the provisions of this Part with regard to the issuing, renewal, suspension and revocation of certificates;
- (d) providing for the expiration of certificates and governing the requirements and qualifications for the issuing and renewal of certificates;
- (e) providing for the maintenance and inspection of registers;
- (f) governing standards of practice for the profession;
- (g) prohibiting the practice of nursing by members where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
- (h) defining professional misconduct for the purposes of this Part;
- (i) providing for a program for the continuing education of members to maintain their standard of competence and requiring members to participate in such continuing education;
- (j) respecting the reporting and publication of decisions in disciplinary matters;
- (k) providing for the compilation of statistical information on the supply, distribution and professional activities of members and requiring members to provide the information necessary to compile such statistics;
- (l) respecting the duties and authority of the Director;
- (m) requiring the payment of annual fees by members and fees for certification and examinations, and prescribing the amounts thereof;

- (n) prescribing forms and providing for their use;
- (o) providing for the exemption of any member from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable.

75.—(1) The Council may pass by-laws relating to the By-laws administrative and domestic affairs of the College not inconsistent with this Act and the regulations and without limiting the generality of the foregoing,

- (a) prescribing the seal of the College;
- (b) providing for the execution of documents by the College;
- (c) respecting banking and finance;
- (d) fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;
- (e) providing procedures for the election of President and Vice-President of the College, the filling of a vacancy in those offices, and prescribing the duties of the President and Vice-President;
- (f) respecting the calling, holding and conducting of meetings of the Council and the duties of members of Council;
- (g) respecting the calling, holding and conducting of meetings of the membership of the College;
- (h) prescribing the remuneration of the members of the Council and committees other than persons appointed by the Lieutenant Governor in Council and providing for the payment of necessary expenses of the Council and committees in the conduct of their business;
- (i) providing for the appointment, composition, powers and duties of such additional or special committees as may be required;
- (j) delegating to the Executive Committee such powers and duties of the Council as are set out in the by-law, other than the power to make, amend or revoke regulations and by-laws;
- (k) providing for a code of ethics;
- (l) prescribing forms and providing for their use;

- (m) providing procedures for the making, amending and revoking of the by-laws;
- (n) respecting management of the property of the College;
- (o) respecting the application of the funds of the College and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;
- (p) providing for the entering into arrangements by the College for its members respecting indemnity for professional liability and respecting the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members and exempting members or any class thereof from all or part of any such levy;
- (q) respecting membership of the College in a national organization with similar functions, the payment of an annual assessment and provision for representatives at meetings;
- (r) respecting all of the things that are considered necessary for the attainment of the objects of the College and the efficient conduct of its affairs.

Distribution
of by-laws

- (2) A copy of the by-laws made under subsection 1 and amendments thereto,
 - (a) shall be forwarded to the Minister;
 - (b) shall be forwarded to each member; and
 - (c) shall be available for public inspection in the office of the College.

Use of
titles

76.—(1) No person shall hold himself out as competent to practise as a registered nurse or as a registered nursing assistant or otherwise as the holder of a certificate under this Part unless such person is the holder of the appropriate certificate under this Part.

Idem

(2) No person shall use the title “registered nurse” or the designation “Reg.N.” or “R.N.” or other designation representing the title unless such person is the holder of a certificate as a registered nurse under this Part.

Idem

(3) No person shall use the title “registered nursing assistant” or the designation “R.N.A.” or other designation representing the title unless such person is the holder of a certificate as a registered nursing assistant under this Part.

Establish-
ment of
committees

77.—(1) The Council shall establish and appoint as herein-after provided the following committees,

- (a) Executive Committee;
- (b) Registration Committee;

(c) Complaints Committee;

(d) Discipline Committee,

and the appointments thereto shall include representation of both registered nurses and registered nursing assistants.

(2) The Council may establish such other committees as the Other Committees Council from time to time considers necessary.

(3) Where one or more vacancies occur in the membership Vacancies of the Council or any committee, the members remaining in office constitute the Council or committee so long as their number is not fewer than the prescribed quorum.

78.—(1) The Executive Committee shall be composed of, Executive Committee

(a) the President, who shall be chairman of the Committee;

(b) the Vice-President; and

(c) three persons who are members of the Council, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

(2) The Executive Committee shall perform such functions Duties of the Council as are delegated to it by the Council, the by-laws or this Part and, subject to ratification by the Council at its next ensuing meeting, may take action upon any other matter that requires immediate attention between meetings of the Council, other than to make, amend or revoke a regulation or by-law.

(3) A majority of the members of the Executive Committee Quorum constitutes a quorum.

79.—(1) The Registration Committee shall be composed Registration Committee of nine persons who are members of the Council, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

(2) The Council shall name one member of the Registration Chairman Committee to be Chairman.

(3) A majority of the members of the Registration Com- Quorum mittee constitutes a quorum.

(4) The Registration Committee shall submit an annual Reports report of its activities to the Council and may make such other reports to the Council and Executive Committee as it considers appropriate.

Issuance of certificates

80.—(1) The Director shall issue a certificate or renewal thereof to any applicant therefor who is qualified under this Part and the regulations and has passed such examinations as the Council may set or approve, and the Director shall refer to the Registration Committee every application for a certificate or renewal thereof that he proposes to refuse or to which he considers terms, conditions or limitations should be attached.

Powers and duties of Registration Committee

- (2) The Registration Committee,
 - (a) shall determine the eligibility of applicants for certificates or renewals thereof and may require an applicant to take and pass such additional examinations as the Council may set or approve and pay such fees therefor as the Registration Committee fixes or to take such additional training as the Registration Committee specifies; and
 - (b) may exempt an applicant from any requirement for certification.

Conditions of certificates

- (3) The Registration Committee may direct the Director to issue or refuse to issue certificates and renewals or to issue certificates and renewals subject to such terms, conditions and limitations as the Committee specifies.

Refusal to renew

- (4) For the purposes of Part I, a refusal to renew a certificate shall be deemed to be a refusal to grant the certificate.

Review of qualifications

- (5) The Registration Committee may review the qualifications of any member and may impose a further term, condition or limitation on his certificate pending the demonstration of such standard of competence through the completion of such experience, courses of study or continuing education as the Committee specifies.

Registers

- (6) The Director shall maintain one or more registers in which is entered every person to whom a certificate has been issued identifying the terms, conditions and limitations attached to the certificate or the registration and every revocation, suspension, cancellation and expiration or other termination and every renewal of the certificate and such other information as the Registration Committee or Discipline Committee directs.

Continuance of registration under R.S.O. 1970, c. 301

- (7) Every person who was registered as a registered nurse or a registered nursing assistant under *The Nurses Act* being chapter 301 of the Revised Statutes of Ontario, 1970, immediately before this Part comes into force shall be deemed to be the holder of a certificate under this Part until it expires or is revoked, suspended or cancelled under this Part.

Complaints Committee

- 81.**—(1) The Complaints Committee shall be composed of five persons who are members of the Council, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

(2) No person who is a member of the Discipline Committee shall be a member of the Complaints Committee. Membership in other Committees

(3) The Council shall name one member of the Complaints Committee to be its Chairman. Chairman

(4) Three members of the Complaints Committee constitute Quorum a quorum.

82.—(1) The Complaints Committee shall consider and Duties investigate complaints made by members of the public or members of the College regarding the conduct or actions of any member of the College, but no action shall be taken by the Committee under subsection 2 unless,

- (a) a written complaint has been filed with the Director and the member whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations he may wish to make concerning the matter; and
- (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

(2) The Committee in accordance with the information it Idem receives may,

- (a) direct that the matter be referred, in whole or in part, to the Discipline Committee or to the Executive Committee for the purposes of section 85; or
- (b) direct that the matter not be referred under clause *a*; or
- (c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Part or the regulations or by-laws.

(3) The Committee shall give its decision in writing to the Director for the purposes of section 8 and, where the decision reasons is made under clause *b* of subsection 2, its reasons therefor. Decision and reasons

83.—(1) The Discipline Committee shall be composed of Discipline Committee ten persons who are members of the Council, of whom two shall be persons appointed to the Council by the Lieutenant Governor in Council.

(2) Five or more members of the Discipline Committee, Quorum and votes of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum, and all disciplinary decisions require the vote of a majority of the members of the Discipline Committee present at the meeting. Quorum and votes

**Disability
of lay
member**

(3) Where the Discipline Committee commences a hearing and the member thereof who is appointed to the Council by the Lieutenant Governor in Council becomes unable to continue to act, the remaining members may complete the hearing notwithstanding his absence.

Chairman

(4) The Council shall name one member of the Discipline Committee to be its chairman.

**Reference by
Council or
Executive
Committee**

(5) Notwithstanding section 82, the Council or the Executive Committee may direct the Discipline Committee to hold a hearing and determine any specified allegation of professional misconduct or incompetence on the part of a member.

**Duties of
Discipline
Committee**

84.—(1) The Discipline Committee shall,

- (a) when so directed by the Council, Executive Committee or Complaints Committee, hear and determine allegations of professional misconduct or incompetence against any member;
- (b) hear and determine matters referred to it under section 82, 83 or 86; and
- (c) perform such other duties as are assigned to it by the Council.

Idem

(2) In the case of hearings into allegations of professional misconduct or incompetence, the Discipline Committee shall,

- (a) consider the allegations, hear the evidence and ascertain the facts of the case;
- (b) determine whether upon the evidence and the facts so ascertained the allegations have been proved;
- (c) determine whether in respect of the allegations so proved the member is guilty of professional misconduct or incompetence;
- (d) determine the penalty to be imposed as hereinafter provided in cases in which it finds the member guilty of professional misconduct or of incompetence.

**Professional
misconduct**

(3) A member may be found guilty of professional misconduct by the Committee if,

- (a) he has been found guilty of an offence relevant to his suitability to practise, upon proof of such conviction;
- (b) he is in contravention of subsection 1 of section 76; or
- (c) he has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.

(4) The Discipline Committee may find a member to be incompetent if in its opinion he has displayed in his professional care of a patient a lack of knowledge, skill or judgment or disregard for the welfare of the patient of a nature or to an extent that demonstrates he is unfit to continue in practice.

(5) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence it may by order, Powers of Discipline Committee

- (a) revoke the certificate of the member;
- (b) suspend the certificate of the member for a stated period;
- (c) impose such restrictions on the certificate of the member for such a period and subject to such conditions as the Committee designates;
- (d) reprimand the member, and if deemed warranted, direct that the fact of such reprimand be recorded on the register;
- (e) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates,

or any combination thereof.

(6) Where the Discipline Committee is of the opinion that costs the commencement of the proceedings was unwarranted, the Committee may order that the College reimburse the member for his costs or such portion thereof as the Discipline Committee fixes.

(7) Where a certificate is suspended or restricted for a period under subsection 5, the suspension or restriction applies in respect of any renewal or right to renewal of the certificate for the duration of the period. Expiration of suspended or restricted certificate

(8) Where the Discipline Committee revokes, suspends or restricts a certificate on the grounds of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision. Stay on appeal for incompetence

(9) Where the Discipline Committee revokes, suspends or restricts the certificate of a member on grounds other than professional misconduct for incompetence, the order shall not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned. Stay on appeal for professional misconduct

(10) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the member. Service of decision of Discipline Committee

**Continuation
on expiry of
Committee
membership**

(11) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his term of office had not expired or been terminated.

**Interpre-
tation**

85.—(1) In this section,

- (a) “board of inquiry” means a board of inquiry appointed by the Executive Committee under subsection 2;
- (b) “incapacitated member” means a member suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member that he no longer be permitted to practise or that his practice be restricted.

**Reference
to board of
inquiry**

(2) Where the Director receives information leading him to believe that a member may be an incapacitated member, he shall make such inquiry as he considers appropriate and report to the Executive Committee who may, upon notice to the member, appoint a board of inquiry composed of at least two members of the College and one member of the Council appointed thereto by the Lieutenant Governor in Council who shall inquire into the matter.

Examination

(3) The board of inquiry shall make such inquiries as it considers appropriate and may require the member to submit to physical or mental examination by such qualified person as the board designates and if the member refuses or fails to submit to such examination the board may order that his certificate be suspended until he complies.

**Hearing by
Registration
Committee**

(4) The board of inquiry shall report its findings to the Executive Committee and deliver a copy thereof and a copy of any medical report obtained under subsection 3 to the member about whom the report is made and if, in the opinion of the Executive Committee, the evidence so warrants, the Executive Committee shall refer the matter to the Registration Committee to hold a hearing and may suspend the member's certificate until the determination of the question of his capacity becomes final.

Parties

(5) The board of inquiry, the person whose capacity is being investigated and any other person specified by the Registration Committee are parties to the hearing.

**Medical
evidence**

(6) A legally qualified medical practitioner is not compellable to produce at the hearing his case histories, notes or any other records constituting medical evidence but,

when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment and such report shall be signed by him and served upon the other parties to the proceedings,

- (a) where the evidence is required by the College, at least five days before the hearing commences; and
- (b) where the evidence is required by the person about whom the report is made, at least five days before its introduction as evidence,

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

(7) The Registration Committee shall, after the hearing, Powers of
Registration
Committee

- (a) make a finding as to whether or not the member is an incapacitated member; and
- (b) where the member is found to be an incapacitated member, by order,
 - (i) revoke his certificate,
 - (ii) suspend his certificate for such period as the Committee considers appropriate, or
 - (iii) attach such terms and conditions to the certificate as the Committee considers appropriate.

(8) The provisions of Part I and this Part applying to Procedures proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration and appeals therefrom apply, *mutatis mutandis*, to proceedings of the Registration Committee under this section, except that the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

86.—(1) A person whose certificate has been revoked or suspended for cause under this Part, or registration has been suspended or cancelled for cause under a predecessor of this Part, may apply in writing to the Director for the issuance of a certificate or removal of the suspension, but such application shall not be made sooner than one year after the revocation or cancellation, or where the suspension is for more than one year, one year after the suspension. Restoration
of regis-
stration or
certificate

(2) The Director shall refer the application to the Discipline Committee, or where the revocation or suspension was on the grounds of incapacity, to the Registration Committee, which Reference to
Discipline
Committee

shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Council and to the former member.

Procedures

(3) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration, except subsection 9 of section 11, apply, *mutatis mutandis*, to proceedings of the Registration Committee and Discipline Committee under this section.

Duties of employers of registered nurses

87. Every person, other than a patient, who employs a person as a registered nurse or registered nursing assistant and every agency or registry that procures employment for a person as a registered nurse or registered nursing assistant,

- (a) shall ensure that such person is the holder of an appropriate certificate under this Part; and
- (b) shall report to the College any termination of such employment for reasons purporting to constitute professional misconduct, incompetence or incapacity.

Restraining orders

88.—(1) Where it appears to the College that any person does not comply with any provision of this Part or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the College may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

Appeal

(2) An appeal lies to the Supreme Court from an order made under subsection 1.

Penalties

89.—(1) Every person who is in contravention of section 76 is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$2,000 and for each subsequent offence to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both.

Idem

(2) Every person who is in contravention of section 87 is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$1,000 and for each subsequent offence to a fine of not more than \$2,000.

Repeals

90.—(1) *The Nurses Act*, being chapter 301 of the Revised Statutes of Ontario, 1970 and *The Nurses Amendment Act, 1973*, being chapter 30, are repealed.

References

(2) Any reference in any Act or regulation to *The Nurses Act* shall be deemed to be a reference to this Part.

PART V

OPTOMETRY

91.—(1) In this Part,Interpre-
tation

- (a) “by-laws” means the by-laws made under this Part;
- (b) “College” means the College of Optometrists of Ontario;
- (c) “Council” means the Council of the College;
- (d) “licence” means a licence for the practice of optometry issued under this Part;
- (e) “member” means a member of the College;
- (f) “practice of optometry” means the services usually performed by an optometrist, including the measurement and assessment of vision, other than by the use of drugs, except such drugs for such purposes as are prescribed by the regulations, the prescribing and dispensing of ophthalmic appliances, and prescribing and providing orthoptics for the relief or correction of any visual or muscular error or defect of the eye;
- (g) “Registrar” means the Registrar of the College;
- (h) “regulations” means the regulations made under this Part.

(2) The practice of optometry is a health discipline to which ^{Health discipline} this Part applies.

92.—(1) The College of Optometrists of Ontario is continued as a body corporate without share capital with power to acquire, hold and dispose of real and personal property for the purposes of this Part. ^{College of Optometrists of Ontario continued}

(2) The objects of the College are,

Objects

- (a) to regulate the practice of optometry and to govern its members in accordance with this Act, the regulations and the by-laws;
- (b) to establish, maintain and develop standards of knowledge and skill among its members;
- (c) to establish, maintain and develop standards of qualification and practice for the practice of optometry;

- (d) to establish, maintain and develop standards of professional ethics among its members;
- (e) to administer this Part and perform such other duties and exercise such other powers as are imposed or conferred on the College by or under any Act,

in order that the public interest may be served and protected.

**Membership
in the
College**

93.—(1) Every person licensed by the College is a member of the College subject to any term, condition or limitation to which the licence is subject.

**Resignation of
membership**

(2) A member may resign his membership by filing with the Registrar his resignation in writing and his licence is thereupon cancelled, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

**Cancellation
for default
of fees**

(3) The Registrar may cancel a licence for non-payment of any prescribed fee after giving the member at least two months notice of the default and intention to cancel, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

**Council of
the College**

94.—(1) The Board of Directors of the College is continued as the Council of the College which shall be the governing body and board of directors of the College and shall manage and administer its affairs.

**Composition
of Council**

(2) The Council shall be composed of,

- (a) one person who is appointed by the University of Waterloo from the faculty of the School of Optometry;
- (b) three persons who are not members of a Council under this Act or registered or licensed under this Act or any other Act governing a health practice and are appointed by the Lieutenant Governor in Council; and
- (c) six persons who are members and are elected by the members in the manner provided by the regulations.

**Remuneration
of lay
appointees**

(3) The persons appointed under clause *b* of subsection 2 shall be paid out of moneys appropriated therefor by the Legislature such expenses and remuneration as is determined by the Lieutenant Governor in Council.

(4) The appointment of every person appointed under subsection 2 shall be for a term not exceeding three years, and a person whose appointment expires is eligible for re-appointment.

(5) Every member who is,

Qualifications to vote

(a) resident in Ontario; and

(b) not in default of payment of the annual fee prescribed by the regulations,

is qualified to vote at an election of members of the Council.

(6) The Council shall elect annually a President and Vice-President from among its members.

President and Vice-President

(7) The Council shall appoint during pleasure a Registrar, Treasurer, Secretary and such other officers and servants as may from time to time be necessary in the opinion of the Council to perform the work of the College.

Registrar, Treasurer, Secretary and staff

(8) A majority of the members of the Council constitutes Quorum a quorum.

(9) The members of the Council who were elected under *The Optometry Act*, being chapter 335 of the Revised Statutes of Ontario, 1970 and were in office immediately before this Part comes into force shall continue in office and shall be deemed to be the members referred to in clause c of subsection 2 until the expiration of the term for which they were elected or until the office otherwise becomes vacant.

Continuation of Council members under R.S.O. 1970, c. 335

95. In addition to his powers and duties under Part I, the Minister may,

(a) review the activities of the Council;

(b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;

(c) advise the Council with respect to the implementation of this Part and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures.

96. Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations.

Regulations

- (a) establishing electoral districts for the purposes of the election of members to the Council and respecting and governing the qualifications, nomination, election and term of office of the members to be elected, and controverted elections;
- (b) prescribing the conditions disqualifying elected members from sitting on the Council and governing the filling of vacancies on the Council;
- (c) respecting any matter ancillary to the provisions of this Part with regard to the issuing, suspension and revocation of licences;
- (d) prescribing classes of licences and governing the requirements and qualifications for the issuing of licences or any class thereof and prescribing the terms and conditions thereof;
- (e) providing for the maintenance and inspection of registers of persons permitted to practise;
- (f) governing standards of practice for the profession;
- (g) prescribing drugs that may be used in the practice of optometry for such purposes as are specified;
- (h) providing for the designation of life members of the College and prescribing their rights and privileges;
- (i) authorizing persons other than members to perform specified acts in the practice of optometry under the supervision or direction of a member;
- (j) prohibiting the practice of optometry where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
- (k) defining professional misconduct for the purposes of this Part;
- (l) providing for a program of continuing education of members to maintain their standard of competence and requiring members to participate in such continuing education;
- (m) providing for the establishment and operation of an appraisal committee for the purposes of examining and assessing the standard of practice in the profession and reporting thereon to the Council and examining and assessing the standards of practice, qualifications and continuing education of members and making recommendations to the Registration Committee thereon;

- (n) regulating, controlling and prohibiting the use of terms, titles or designations by members or groups or associations of members in respect of their practices;
- (o) respecting the reporting and publication of decisions in disciplinary matters;
- (p) providing for the compilation of statistical information on the supply, distribution and professional activities of members and requiring members to provide the information necessary to compile such statistics;
- (q) respecting the duties and authority of the Registrar;
- (r) requiring and providing for the inspection and examination of the office, records and equipment of members in connection with their practice;
- (s) prescribing the records that shall be kept respecting patients;
- (t) requiring the payment of annual fees by members and fees for licensing, examinations and continuing education, including penalties for late payment, and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof;
- (u) prescribing forms and providing for their use;
- (v) providing for the exemption of any member from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable.

97.—(1) The Council may pass by-laws relating to the By-laws administrative and domestic affairs of the College not inconsistent with this Act and the regulations and without limiting the generality of the foregoing,

- (a) prescribing the seal of the College;
- (b) providing for the execution of documents by the College;
- (c) respecting banking and finance;
- (d) fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;

- (e) providing procedures for the election of President and Vice-President of the College, the filling of a vacancy in those offices, and prescribing the duties of the President and Vice-President;
- (f) respecting the calling, holding and conducting of meetings of the Council and the duties of members of Council;
- (g) respecting the calling, holding and conducting of meetings of the membership of the College;
- (h) prescribing the remuneration of the members of the Council and committees other than persons appointed by the Lieutenant Governor in Council and providing for the payment of necessary expenses of the Council and committees in the conduct of their business;
- (i) providing for the appointment, composition, powers and duties of such additional or special committees as may be required;
- (j) delegating to the Executive Committee such powers and duties of the Council as are set out in the by-law, other than the power to make, amend or revoke regulations and by-laws;
- (k) providing for a code of ethics;
- (l) prescribing forms and providing for their use;
- (m) providing procedures for the making, amending and revoking of the by-laws;
- (n) respecting management of the property of the College;
- (o) respecting the application of the funds of the College and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;
- (p) providing for the entering into arrangements by the College for its members respecting indemnity for professional liability and respecting the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members and exempting members or any class thereof from all or part of any such levy;
- (q) respecting membership of the College in a national organization with similar functions, the payment of an annual assessment and provision for representatives at meetings;

- (r) providing for the appointment of inspectors for the purposes of this Part;
 - (s) respecting all of the things that are considered necessary for the attainment of the objects of the College and the efficient conduct of its affairs.
- (2) A by-law is effective when it is passed by the Council Confirmation of by-laws but expires with the close of the next annual meeting of members of the College held after its passing, unless it is confirmed by the meeting.

(3) A copy of the by-laws made under subsection 1 and Distribution of by-laws amendments thereto,

- (a) shall be forwarded to the Minister;
- (b) shall be forwarded to each member; and
- (c) shall be available for public inspection in the office of the College.

98.—(1) No person shall engage in or hold himself out as Licence to practise engaging in the practice of optometry unless he is licensed under this Part.

(2) Subsection 1 does not apply to,

Exceptions

- (a) a student enrolled in the School of Optometry at the University of Waterloo who practices optometry as required by the curriculum under the supervision of a member of the faculty or a member of the College;
- (b) an applicant for a licence under this Part who practises optometry under the personal supervision of a member of the College for the purpose of completing qualifying studies or clinical experience required under this Part.

(3) For the purposes of subsection 1, proof of the per-Proof of performance of one act in the practice of optometry on one practice occasion is sufficient to establish engaging in the practice of optometry.

(4) A member or person authorized by the regulations may engage in the practice of optometry, notwithstanding that any part of such practice is included in the practice of any other health discipline.

99. No member shall use drugs in his practice, except Use of certain drugs such drugs for such purposes as are prescribed by the regu- prohibited lations.

Establish-
ment of
committees

100.—(1) The Council shall establish and appoint as hereinafter provided the following committees,

- (a) Executive Committee;
- (b) Registration Committee;
- (c) Complaints Committee;
- (d) Discipline Committee,

and may establish such other committees as the Council from time to time considers necessary.

Vacancies

(2) Where one or more vacancies occur in the membership of the Council or any committee, the members remaining in office constitute the Council or committee so long as their number is not fewer than the prescribed quorum.

Executive
Committee

101.—(1) The Executive Committee shall be composed of three persons who are members of the Council of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

Quorum

(2) Two members of the Executive Committee constitute a quorum.

Duties

(3) The Executive Committee shall perform such functions of the Council as are delegated to it by the Council, the by-laws or this Part and, subject to ratification by the Council at its next ensuing meeting, may take action upon any other matter that requires immediate attention between meetings of the Council, other than to make, amend or revoke a regulation or by-law.

Registration
Committee

102.—(1) The Registration Committee shall be composed of,

(a) two members of the Council of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council; and

(b) two members of the College of whom one shall be a member of the faculty of the School of Optometry of the University of Waterloo.

Chairman

(2) The Council shall name one member of the Registration Committee to be chairman.

Quorum

(3) A majority of the members of the Registration Committee constitutes a quorum.

Issuance of
licences

103.—(1) The Registrar shall issue a licence to any applicant therefor who is qualified under this Part and the regula-

tions and has passed such examinations as the Council may set or approve, and the Registrar shall refer to the Registration Committee every application for a licence that he proposes to refuse or to which he considers terms, conditions or limitations should be attached.

(2) The Registration Committee,

Powers and
duties of
Registration
Committee

- (a) shall determine the eligibility of applicants for licences and may require an applicant to take and pass such additional examinations as the Council may set or approve and pay such fees therefor as the Registration Committee fixes or to take such additional training as the Registration Committee specifies; and
- (b) may exempt an applicant from any licensing requirement.

(3) The Registration Committee may direct the Registrar^{Idem} to issue or refuse to issue licences or to issue licences subject to such terms, conditions and limitations as the Committee specifies.

(4) The Registration Committee may review the qualifications of any member and may impose a term, condition or limitation on his licence pending the demonstration of such standard of competence through the completion of such experience, courses of study or continuing education as the Committee specifies.

Review of
qualifi-
cations

(5) The Registrar shall maintain one or more registers in Registers of which is entered every person who is licensed to practise optometry, identifying the terms, conditions and limitations attached to the licence, and shall note on the register every revocation, suspension and cancellation of a licence and such other information as the Registration Committee or Discipline Committee directs.

(6) Every person who was registered as an optometrist Continuance of registration under *The Optometry Act*, being chapter 335 of the Revised Statutes of Ontario, 1970, immediately before this Part comes into force shall be deemed to be the holder of a licence under this Part for the unexpired portion of the term of the registration, unless sooner revoked, suspended or cancelled under this Part.

under R.S.O.
1970, c. 335

104.—(1) The Complaints Committee shall be composed of, Complaints Committee

- (a) three persons who are members of the College;
- (b) two persons who are members of the Council one of whom was appointed to the Council by the Lieutenant Governor in Council.

Idem	(2) No person who is a member of the Discipline Committee shall be a member of the Complaints Committee.
Chairman	(3) The Council shall name one member of the Complaints Committee to be its Chairman.
Quorum	(4) Three members of the Complaints Committee constitute a quorum.
Duties	<p>105.—(1) The Complaints Committee shall consider and investigate complaints made by members of the public or members of the College regarding the conduct or actions of any member of the College, but no action shall be taken by the Committee under subsection 2 unless,</p> <ul style="list-style-type: none"> (a) a written complaint has been filed with the Registrar and the member whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations he may wish to make concerning the matter; and (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.
Idem	<p>(2) The Committee in accordance with the information it receives may,</p> <ul style="list-style-type: none"> (a) direct that the matter be referred, in whole or in part, to the Discipline Committee or to the Executive Committee for the purposes of section 108; or (b) direct that the matter not be referred under clause <i>a</i>; or (c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Part or the regulations or by-laws.
Decision and reasons	(3) The Committee shall give its decision in writing to the Registrar for the purposes of section 8 and, where the decision is made under clause <i>b</i> of subsection 2, its reasons therefor.
Discipline Committee	<p>106.—(1) The Discipline Committee shall be composed of,</p> <ul style="list-style-type: none"> (a) three persons who are members of the College; (b) three persons who are members of the Council, two of whom were appointed to the Council by the Lieutenant Governor in Council.
Quorum and votes	(2) Three or more members of the Discipline Committee, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum, and

all disciplinary decisions require the vote of a majority of the members of the Discipline Committee present at the meeting.

 (3) Where a panel of the Discipline Committee commences a hearing and the member thereof who is appointed to the Council by the Lieutenant Governor in Council becomes unable to continue to act, the remaining members may complete the hearing notwithstanding his absence. 

(4) The Council shall name one member of the Discipline Committee to be its chairman.

(5) Notwithstanding section 105, the Council or the Executive Committee may direct the Discipline Committee to hold a hearing and determine any specified allegation of professional misconduct or incompetence on the part of a member.

107.—(1) The Discipline Committee shall,

Duties of
Discipline
Committee

- (a) when so directed by the Council, Executive Committee or Complaints Committee, hear and determine allegations of professional misconduct or incompetence against any member;
- (b) hear and determine matters referred to it under sections 105, 106 or 109; and
- (c) perform such other duties as are assigned to it by the Council.

(2) In the case of hearings into allegations of professional misconduct or incompetence, the Discipline Committee shall,

- (a) consider the allegations, hear the evidence and ascertain the facts of the case;
- (b) determine whether upon the evidence and the facts so ascertained the allegations have been proved;
- (c) determine whether in respect of the allegations so proved the member is guilty of professional misconduct or incompetence;
- (d) determine the penalty to be imposed as hereinafter provided in cases in which it finds the member guilty of professional misconduct or of incompetence.

Professional misconduct

(3) A member may be found guilty of professional misconduct by the Committee if,

- (a) he has been found guilty of an offence relevant to his suitability to practise, upon proof of such conviction;
- (b) he is in contravention of section 99; or
- (c) he has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.

Incompetence

(4) The Discipline Committee may find a member to be incompetent if in its opinion he has displayed in his professional care of a patient a lack of knowledge, skill or judgment or disregard for the welfare of the patient of a nature or to an extent that demonstrates he is unfit to continue in practice.

Powers of Discipline Committee

(5) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence it may by order,

- (a) revoke the licence of the member;
- (b) suspend the licence of the member for a stated period;
- (c) impose such restrictions on the licence of the member for such a period and subject to such conditions as the Committee designates;
- (d) reprimand the member, and if deemed warranted, direct that the fact of such reprimand be recorded on the register;
- (e) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates,

or any combination thereof.

Costs

(6) Where the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee may order that the College reimburse the member for his costs or such portion thereof as the Discipline Committee fixes.

(7) Where the Discipline Committee revokes, suspends or restricts a licence on the grounds of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

(8) Where the Discipline Committee revokes, suspends or restricts the licence of a member on grounds other than incompetence, the order shall not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned.

(9) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the member.

(10) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his term of office had not expired or been terminated.

108.—(1) In this section,

Interpretation

(a) “board of inquiry” means a board of inquiry appointed by the Executive Committee under subsection 2;

(b) “incapacitated member” means a member suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member that he no longer be permitted to practise or that his practice be restricted.

(2) Where the Registrar receives information leading him to believe that a member may be an incapacitated member, he shall make such inquiry as he considers appropriate and report to the Executive Committee who may, upon notice to the member, appoint a board of inquiry composed of at least two members of the College and one member of the Council appointed thereto by the Lieutenant Governor in Council who shall inquire into the matter.

(3) The board of inquiry shall make such inquiries as it considers appropriate and may require the member to submit

to physical or mental examination by such qualified person as the board designates and if the member refuses or fails to submit to such examination the board may order that his licence be suspended until he complies.

Hearing by
Registration
Committee

(4) The board of inquiry shall report its findings to the Executive Committee and deliver a copy thereof and a copy of any medical report obtained under subsection 3 to the member about whom the report is made and if, in the opinion of the Executive Committee, the evidence so warrants, the Executive Committee shall refer the matter to the Registration Committee to hold a hearing and may suspend the member's licence until the determination of the question of his capacity becomes final.

Parties

(5) The College, the person whose capacity is being investigated and any other person specified by the Registration Committee are parties to the hearing.

Medical
evidence

(6) A legally qualified medical practitioner is not compellable to produce at the hearing his case histories, notes or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment and such report shall be signed by him and served upon the other parties to the proceedings,

- (a) where the evidence is required by the College, at least five days before the hearing commences; and
- (b) where the evidence is required by the person about whom the report is made, at least five days before its introduction as evidence,

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

Powers of
Registration
Committee

- (7) The Registration Committee shall, after the hearing,
 - (a) make a finding as to whether or not the member is an incapacitated member; and
 - (b) where the member is found to be an incapacitated member, by order,
 - (i) revoke his licence,

- (ii) suspend his licence for such period as the Committee considers appropriate, or
- (iii) attach such terms and conditions to the licence as the Committee considers appropriate.

(8) The provisions of Part I and this Part applying to ^{Procedures} proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration and appeals therefrom apply, *mutatis mutandis*, to proceedings of the Registration Committee under this section, except that the decision takes effect immediately notwithstanding that an appeal is taken from the order.

109.—(1) A person whose licence has been revoked or ^{Restoration of licence} suspended for cause under this Part, or registration has been suspended or cancelled for cause under a predecessor of this Part, may apply in writing to the Registrar for the issuance of a licence or removal of the suspension, but such application shall not be made sooner than one year after the revocation or cancellation or, where the suspension is for more than one year, one year after the suspension.

(2) The Registrar shall refer the application to the Discipline Committee, or where the revocation or suspension was on the grounds of incapacity to the Registration Committee, which shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Council and to the former member.

(3) The provisions of Part I and this Part applying to ^{Procedures} proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration, except subsection 9 of section 11 apply, *mutatis mutandis*, to proceedings of the Registration Committee and Discipline Committee under this section.

110.—(1) Where the Registrar believes on reasonable and ^{Investigation of members} probable grounds that a member has committed an act of professional misconduct or incompetence, the Registrar may by order appoint one or more persons to make an investigation to ascertain whether such an act has occurred, and the person appointed shall report the result of his investigation to the Registrar.

(2) For purposes relevant to the subject-matter of an ^{Powers of investigator} investigation under this section, the person appointed to make the investigation may inquire into and examine the practice of the member in respect of whom the investigation

1971, c. 49

is being made and may, upon production of his appointment, enter at any reasonable time the business premises of such person and examine books, records, documents and things relevant to the subject-matter of the investigation, and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to such inquiry as if it were an inquiry under that Act.

Obstruction
of
Investigator

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation.

Search
warrant

(4) Where a provincial judge is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the provincial judge may, whether or not an inspection has been made or attempted under subsection 2, issue an order authorizing the person making the investigation, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the provincial judge, by the order, authorizes the person making the investigation to make the search at night.

Removal of
books, etc.

(5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, records, documents or things examined under subsection 2 or 4 relating to the member whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, records or documents, but such copying shall be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member whose practice is being investigated.

Admissibility
of copies

(6) Any copy made as provided in subsection 5 and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, record or document and its contents.

(7) The Registrar shall report the results of the investigation ^{Report of Registrar} to the Council or the Executive Committee or to such other committee as he considers appropriate.

111.—(1) Every person employed in the administration of ^{Matters confidential} this Part, including any person making an inquiry or investigation under section 110 and any member of the Council or a Committee shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry or investigation under section 110 and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Part and the regulations and by-laws or any proceedings under this Part or the regulations;
- (b) as may be required for the enforcement of *The Health Insurance Act, 1972*;^{1972, c. 91}
- (c) to his counsel; or
- (d) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required ^{Testimony in civil suit} to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry or investigation except in a proceeding under this Part or the regulations or by-laws.

112.—(1) Where it appears to the College that any person ^{Restraining orders} does not comply with any provision of this Part or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the College may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

(2) An appeal lies to the Supreme Court from an order made ^{Appeal} under subsection 1.

113.—(1) Nothing in this Part applies to the practice of ^{Exemption under R.S.O. 1970, c. 334} ophthalmic dispensing by an ophthalmic dispenser registered under *The Ophthalmic Dispensers Act*.

Retail
merchants



(2) Nothing in this Part prevents,

- (a) the sale of protective glasses for industrial purposes, coloured glasses not embodying any ophthalmic lens, goggles or simple magnifying glasses not sold or divided for the relief or correction of any visual or muscular error or defect of the eye; or
- (b) the sale or offering for sale by a retail merchant at his place of business of spectacles or eyeglasses,



but the Lieutenant Governor in Council may make regulations governing or restricting the sale or offering for sale referred to in clause b and prescribing the terms and conditions thereof and designating the nature and kind of spectacles and eyeglasses that may be sold under this subsection.

Penalties

114.—(1) Every person who is in contravention of section 98 is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$2,000 and for each subsequent offence to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both.

Idem

(2) Every person who, not being a member, uses an occupational designation prescribed by the regulations to be used by members or a like designation is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$1,000 and for each subsequent offence to a fine of not more than \$2,000.

Idem

(3) Any person who obstructs a person appointed to make an investigation under section 110 in the course of his duties is guilty of an offence and on summary conviction is liable to a fine not exceeding \$2,000.

Act,
repealed

115.—(1) *The Optometry Act*, being chapter 335 of the Revised Statutes of Ontario, 1970, is repealed.

References

(2) Any reference in any Act to an optometrist registered under *The Optometry Act* shall be deemed to be a reference to an optometrist licensed under this Part and any reference to *The Optometry Act* shall be deemed to be a reference to this Part.

PART VI

PHARMACY

116.—(1) In this Part,

Interpre-
tation

- (a) “by-laws” means the by-laws made under this Part;
- (b) “College” means the Ontario College of Pharmacists;
- (c) “Council” means the Council of the College;
- (d) “drug” means any substance or preparation containing any substance,

(i) manufactured, sold or represented for use in,

1. the diagnosis, treatment, mitigation or prevention of a disease, disorder, abnormal physical or mental state or the symptoms thereof, in humans, animals or fowl, or
2. restoring, correcting, or modifying functions in humans, animals or fowl,

(ii) referred to in Schedule C, D, E, F, G or N, or

(iii) listed in a publication named by the regulations,

(iv) named in the regulations,

but does not include,

(v) any substance or preparation referred to in sub-clause i, ii or iii manufactured, offered for sale or sold as, or as part of, a food, drink or cosmetic,

(vi) any medicine registered under the *Proprietary or Patent Medicine Act* (Canada) and sold in accordance with its provisions, or

(vii) a substance or preparation named in Schedule A or B;

(e) “interchangeable pharmaceutical product” means a product containing a drug or drugs in the same

amounts of the same active ingredients in the same dosage form as that directed by a prescription;

- (f) "intern" means a person who is registered under this Part as an intern;
- (g) "licence" means a licence to act as a pharmacist issued under this Part;
- (h) "member" means a member of the College;
- (i) "Parcost C.D.I." means the Parcost Comparative Drug Index prescribed by the regulations;
- (j) "pharmacist" means a person who is licensed under this Part as a pharmacist;
- (k) "pharmacy" means a premises in or in part of which prescriptions are compounded and dispensed for the public or drugs are sold by retail;
- (l) "prescriber" means a person who is authorized to give a prescription within the scope of his practice of a health discipline or profession;
- (m) "prescription" means a direction from a prescriber directing the dispensing of any drug or mixture of drugs for a designated person or animal;
- (n) "register" means a register maintained by the Registrar under this Part;
- (o) "registered pharmacy student" means a person who is registered under this Part as a pharmacy student;
- (p) "Registrar" means the Registrar of the College;
- (q) "registration" means a registration as an intern or registered pharmacy student and "registered" has a corresponding meaning;
- (r) "regulations" mean the regulations made under this Part.

(2) A reference in this Part to Schedules A, B, C, D, E, F, G or N is a reference to such Schedule established by the regulations for the purposes of this Part.

(3) The practice of a pharmacist is a health discipline to which this Part applies.

117.—(1) This Part does not apply to,

Application
of Part

(a) drugs compounded, dispensed or supplied in and by a hospital or a health or custodial institution approved or licensed under any general or special Act under the authority of a prescriber for persons under health care provided by such hospital or health or custodial institution;

(b) the selling of,

(i) any substance registered under the *Pest Control Products Act* (Canada) and sold in accordance with its provisions,

(ii) any feeding stuffs registered under the *Feeds Act* (Canada) and sold in accordance with its provisions,

(iii) a drug by a person licensed under *The Live Stock Medicines Act, 1973*;

(c) the practice of a veterinarian under *The Veterinarians Act*.

(2) Nothing in this Part prevents any person from selling or dispensing a drug to a person authorized under this Act to dispense, prescribe or administer drugs.

THE ONTARIO COLLEGE OF PHARMACISTS

118.—(1) The Ontario College of Pharmacy is continued as the Ontario College of Pharmacists, being a body corporate without share capital with power to acquire, hold and dispose of real and personal property for the purposes of this Part.

(2) The objects of the College are,

Objects

(a) to regulate the practice of pharmacists and to govern its members in accordance with this Act, the regulations and the by-laws;

- (b) to establish, maintain and develop standards of knowledge and skill among its members;
- (c) to establish, maintain and develop standards of qualification and practice for the practice of pharmacists;
- (d) to establish, maintain and develop standards of professional ethics among its members;
- (e) to establish, maintain and develop standards for the operation of pharmacies;
- (f) to administer this Part and perform such other duties and exercise such other powers as are imposed or conferred on the college by or under any Act,

in order that the public interest may be served and protected.

**Membership
in the
College**

119.—(1) Every person licensed by the College is a member of the College subject to any term, condition or limitation to which the licence is subject.

**Resignation
of
membership**

(2) A member may resign his membership by filing with the Registrar his resignation in writing and his licence is thereupon cancelled subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

**Cancellation
for default
of fees**

(3) The Council may cancel a licence for non-payment of any prescribed fee after the member has been given at least two months notice of the default and intention to cancel, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

**Council
of the
College**

120.—(1) The Council of the Ontario College of Pharmacy is continued and shall be the governing body and board of directors of the Ontario College of Pharmacists and shall manage and administer its affairs.

**Composition
of Council**

- (2) The Council shall be composed of,
 - (a) not fewer than thirteen and not more than nineteen persons who are members and are elected by the members in the manner provided by the regulations;
 - (b) not fewer than four and not more than six persons who are not members of a Council under this Act or registered or licensed under this or any other Act governing a health practice, and who are appointed by the Lieutenant Governor in Council; and

- (c) the dean of each faculty of pharmacy in Ontario or, in his absence, a representative who is a member of the faculty and of the College appointed by the dean.
- (3) The persons appointed under clause *b* of subsection 2 shall be paid out of moneys appropriated therefor by the Legislature such expenses and remuneration as is determined by the Lieutenant Governor in Council.

(4) The appointment of every person appointed under subsection 2 expires at the first regular meeting of the Council following the election of members to Council held next after the effective date of his appointment, and a person whose appointment expires is eligible for reappointment.

(5) Every member who is,

Qualifications to vote

(a) resident in Ontario; and

(b) not in default of payment of the annual fee prescribed by the regulations,

is qualified to vote at an election of members of the Council.

(6) The Council shall elect a President and Vice-President from among its members.

President, Vice-President

(7) The Council shall appoint during pleasure a Registrar and may appoint a deputy registrar who shall have the powers of the Registrar for the purposes of this Part, and may appoint such other persons as are from time to time necessary or desirable in the opinion of the Council to perform the work of the College.

(8) A majority of the members of the Council constitutes a quorum.

(9) The Council shall meet at least twice a year.

Meetings of Council

(10) The members of the Council of the Ontario College of Pharmacy who were elected under *The Pharmacy Act*, being chapter 348 of the Revised Statutes of Ontario, 1970 and were in office immediately before this Part comes into force shall continue in office and shall be deemed to be the members referred to in clause *a* of subsection 2 until the expiration of the term for which they were elected or until the office otherwise becomes vacant.

Powers of Minister

121. In addition to his powers and duties under Part 1, the Minister may,

- (a) review the activities of the Council;
- (b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;
- (c) advise the Council with respect to the implementation of this Part and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures.

Regulations

122.—(1) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations,

- (a) fixing the number of members to be elected to the Council and establishing the regional and other representation for elections;
- (b) respecting and governing the qualifications, nomination, election and term of office of the members to be elected to the Council, and controversial elections;
- (c) prescribing the conditions disqualifying elected members from sitting on the Council and governing the filling of vacancies on the Council;
- (d) respecting any matter ancillary to the provisions of this Part with regard to the issuing, suspension and revocation of licences and registrations;
- (e) prescribing classes of licences and governing the requirements and qualifications for the issuing of licences or any class thereof and prescribing the terms and conditions thereof;
- (f) prescribing the qualifications for and conditions of registration of students and interns and governing in-service training for students and interns;
- (g) providing for the maintenance and inspection of registers;
- (h) governing standards of practice for the profession;
- (i) respecting the advertising of professional services;
- (j) prescribing the books and records to be kept, returns to be made and information to be furnished with respect to pharmacies and the practice of pharmacists and providing for the examination and audit of such books and records, as the regulations prescribe;

- (k) regulating advertising by members;
- (l) providing for the designation of honorary members of the College and prescribing their rights and privileges;
- (m) prohibiting practice by pharmacists where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
- (n) defining professional misconduct for the purposes of this Part;
- (o) providing for a program of continuing education of members to maintain their standard of competence and requiring members to participate in such continuing education;
- (p) regulating, controlling and prohibiting the use of terms, titles or designations by members or groups or associations of members in respect of their practices;
- (q) respecting the reporting and publication of decisions in disciplinary matters;
- (r) providing for the compilation of statistical information on the supply, distribution and professional activities of members and requiring members to provide the information necessary to compile such statistics;
- (s) respecting the duties and authority of the Registrar;
- (t) requiring the payment of annual fees by members, students and interns and fees for licensing, registration, examinations and continuing education, including penalties for late payment, and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof;
- (u) prescribing forms and providing for their use;
- (v) providing for the exemption of any member from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable.

(2) The number of members to be elected to the Council and the electoral divisions and other representation fixed and established under clause *a* of subsection 1 shall not be altered or amended more than once in any five year period.
Amendment of electoral divisions

By-laws

123.—(1) The Council may pass by-laws relating to the administrative and domestic affairs of the College not inconsistent with this Act and the regulations and without limiting the generality of the foregoing,

- (a) prescribing the seal of the College;
- (b) providing for the execution of documents by the College;
- (c) respecting banking and finance;
- (d) fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;
- (e) providing procedures for the election of President and Vice-President of the College, the filling of a vacancy in those offices, and prescribing the duties of the President and Vice-President;
- (f) respecting the calling, holding and conducting of meetings of the Council and the duties of members of Council;
- (g) respecting the calling, holding and conducting of meetings of the membership of the College;
- (h) prescribing the remuneration of the members of the Council and committees other than persons appointed by the Lieutenant Governor in Council and providing for the payment of necessary expenses of the Council and committees in the conduct of their business;
- (i) providing for the appointment, composition, powers and duties of such additional or special committees as may be required;
- (j) delegating to the Executive Committee such powers and duties of the Council as are set out in the by-law, other than the power to make, amend or revoke regulations and by-laws;
- (k) providing for a code of ethics;
- (l) providing for the appointment of inspectors for the purposes of this Part;
- (m) prescribing forms and providing for their use;

- (n) providing procedures for the making, amending and revoking of the by-laws;
- (o) respecting management of the property of the College;
- (p) respecting the application of the funds of the College and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;
- (q) providing for the entering into arrangements by the College for its members respecting indemnity for professional liability and respecting the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members and exempting members or any class thereof from all or part of any such levy;
- (r) respecting membership of the College in a national organization with similar functions, the payment of an annual assessment and provision for representatives at meetings;
- (s) authorizing the making of grants for any purpose that may tend to advance scientific knowledge or pharmacy education, or maintain or improve the standards of practice in pharmacy or to support and encourage public information and interest in the past and present role of pharmacy in society;
- (t) respecting all of the things that are considered necessary for the attainment of the objects of the College and the efficient conduct of its affairs.

(2) A copy of the by-laws made under subsection 1 and ^{Distribution of by-laws} amendments thereto,

- (a) shall be forwarded to the Minister;
- (b) shall be forwarded to each member; and
- (c) shall be available for public inspection in the office of the College.

124.—(1) Except as provided in this Part, no person shall act or hold himself out as acting as a pharmacist unless he is licensed under this Part. Licence to act as pharmacist

Use of titles

(2) Any person who, in making or purporting to make a retail sale of a drug or substance in Schedule A or B, uses or associates therewith the title or designation of,

- (a) pharmacist;
- (b) pharmaceutical chemist;
- (c) chemist;
- (d) druggist;
- (e) apothecary,

whether or not in combination with each other or with any other term shall be deemed to be holding himself out as acting as a pharmacist for the purposes of subsection 1.

Conflict with other health discipline

(3) A licence shall be deemed to authorize a member to act as a pharmacist under this Part, notwithstanding that such action is included in the practice of any other health discipline.

Establishment of committees

125.—(1) The Council shall establish and appoint as hereinafter provided the following committees,

- (a) Executive Committee;
- (b) Accreditation Committee;
- (c) Registration Committee;
- (d) Complaints Committee;
- (e) Discipline Committee,

and may establish such other committees as the Council from time to time considers necessary.

Vacancies

(2) Where one or more vacancies occur in the membership of the Council or any committee, the members remaining in office constitute the Council or committee so long as their number is not fewer than the prescribed quorum.

Completing quorum

(3) Where the persons attending a meeting of any Committee duly called fail to constitute a quorum, the President may appoint such members of the Council as are required to complete the quorum to attend the meeting and act as a member of the Committee for the purposes of the meeting.

126.—(1) The Executive Committee shall be composed of, Executive Committee

- (a) the President, who shall be Chairman of the Committee;
- (b) the Vice-President; and
- (c) three members of the Council appointed by the Council, one of whom shall be the immediate past president, if he is a member of Council, and one of whom shall be a person appointed to the Council by the Lieutenant Governor in Council.

(2) A majority of the members of the Executive Committee Quorum constitutes a quorum.

(3) The Executive Committee shall perform such functions Duties of the Council as are delegated to it by the Council, the by-laws or this Part and, subject to ratification by the Council at its next ensuing meeting, may take action upon any other matter that requires immediate attention between meetings of the Council, other than to make, amend or revoke a regulation or by-law.

127.—(1) The Registration Committee shall be composed Registration Committee of,

- (a) one member of the Council who is the dean of a faculty of pharmacy, or his representative on the Council;
- (b) two members of the Council who were elected to the Council; and
- (c) one member of the Council who was appointed to the Council by the Lieutenant Governor in Council.

(2) The Council shall name one member of the Registration Committee to be Chairman.

(3) A majority of the members of the Registration Committee constitutes a quorum.

128.—(1) The Registrar shall issue a licence or registration Licences and registrations to any applicant therefor who is qualified under this Part and has passed such examinations as the Council may set or approve, and the Registrar shall refer to the Registration Committee every application for a licence or registration that he proposes to refuse or to which he considers terms, conditions or limitations should be attached.

Powers and
duties of
Registration
Committee

(2) The Registration Committee,

- (a) shall determine the eligibility of applicants for licences and registrations and may require an applicant to take and pass such additional examinations as the Council may set or approve and pay such fees therefor as the Registration Committee fixes or to take such additional training as the Registration Committee specifies; and
- (b) may exempt an applicant from any admission requirement.

Conditions
of licences

(3) The Registration committee may direct the Registrar to issue or refuse to issue licences or make or refuse to make registrations or to issue licences and make registrations subject to such terms, conditions and limitations as the Committee specifies.

Review of
qualifications

(4) The Registration Committee may review the qualifications of any member and may impose a further term, condition or limitation on his licence pending the demonstration of such standard of competence through the completion of such experience, courses of study or continuing education as the Committee specifies.

Registers of
licences

(5) The Registrar shall maintain one or more registers in which is entered every person who is licensed or registered under this Part, identifying the terms, conditions and limitations attached to the licence or registration, and shall note on the register every revocation, suspension and cancellation or termination of a licence or registration and such other information as the Registration Committee or Discipline Committee directs.

Continuation
of licences
R.S.O. 1970,
c. 348

(6) Every licence and registration issued or made under *The Pharmacy Act*, being chapter 348 of the Revised Statutes of Ontario, 1970, and in effect immediately before this Part comes into force continues in the same manner as if issued or made under this Part.

Accredita-
tion
Committee

129.—(1) The Accreditation Committee shall be composed of,

- (a) three members of the Council who were elected to the Council; and
- (b) one member of the Council who was appointed to the Council by the Lieutenant Governor in Council,

and shall exercise the powers and carry out the duties assigned to it under sections 138 and 139.

(2) No person who is a member of the Discipline Committee ^{Idem} shall be a member of the Accreditation Committee.

(3) The Council shall name one member of the Accreditation Committee to be Chairman.

(4) A majority of the members of the Accreditation Committee constitutes a quorum.

130.—(1) The Complaints Committee shall be composed ^{Complaints Committee} of,

(a) three members of the Council who were elected to the Council; and

(b) one member of the Council who was appointed to the Council by the Lieutenant Governor in Council.

(2) No person who is a member of the Discipline Committee ^{Idem} shall be a member of the Complaints Committee.

(3) The Council shall name one member of the Complaints Committee to be its Chairman.

(4) A majority of the members of the Complaints Committee constitutes a quorum.

131.—(1) The Complaints Committee shall consider and ^{Duties} investigate complaints made by members of the public regarding the conduct or actions of any member of the College, but no action shall be taken by the Committee under subsection 2 unless,

(a) a written complaint has been filed with the Registrar and the member whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations he may wish to make concerning the matter; and

(b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

(2) The Committee in accordance with the information it ^{Idem} receives may,

(a) direct that the matter be referred, in whole or in part, to the Discipline Committee or to the Executive Committee for the purposes of section 134; or

(b) direct that the matter not be referred under clause *a*; or

(c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Part or the regulations or by-laws.

Decision
and
reasons

(3) The Committee shall give its decision in writing to the Registrar for the purposes of section 8 and, where the decision is made under clause *b* of subsection 2, its reasons therefor.

Discipline
Committee

132.—(1) The Discipline Committee shall be composed of,

- (a) four members of the Council who were elected to the Council; and
- (b) one member of the Council who was appointed to the Council by the Lieutenant Governor in Council.

Quorum
and votes

(2) Three or more members of the Discipline Committee, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum, and all disciplinary decisions require the vote of a majority of the members of the Discipline Committee present at the meeting.

Disability
of lay
member

(3) Where the Discipline Committee commences a hearing and the member thereof who is appointed to the Council by the Lieutenant Governor in Council becomes unable to continue to act, the remaining members may complete the hearing notwithstanding his absence.

Chairman

(4) The Council shall name one member of the Discipline Committee to be its Chairman.

Reference
by Council
or Executive
Committee

(5) Notwithstanding section 131, the Council or the Executive Committee may direct the Discipline Committee to hold a hearing and determine any specified allegation of professional misconduct or incompetence on the part of a member.

Duties of
Discipline
Committee

133.—(1) The Discipline Committee shall,

- (a) when so directed by the Council, Executive Committee or Complaints Committee, hear and determine allegations of professional misconduct or incompetence against any member;
- (b) hear and determine matters referred to it under section 131, 132, 135 or 139; and
- (c) perform such other duties as are assigned to it by the Council.

Idem

(2) In the case of hearings into allegations of professional misconduct or incompetence, the Discipline Committee shall,

- (a) consider the allegations, hear the evidence and ascertain the facts of the case;
- (b) determine whether upon the evidence and the facts so ascertained the allegations have been proved;
- (c) determine whether in respect of the allegations so proved the member is guilty of professional misconduct or incompetence;
- (d) determine the penalty to be imposed as hereinafter provided in cases in which it finds the member guilty of professional misconduct or of incompetence.

(3) A member may be found guilty of professional misconduct if,

- (a) he has been found guilty of an offence relevant to his suitability to practise, upon proof of such conviction;
- (b) he has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.

(4) The Discipline Committee may find a member to be incompetent if in its opinion he has displayed in his professional responsibilities a lack of knowledge, skill or judgment or disregard for the welfare of the public he serves of a nature or to an extent that demonstrates he is unfit to carry out the responsibilities of a pharmacist.

(5) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence it may by order, Powers of Discipline Committee

- (a) revoke the licence of the member;
- (b) suspend the licence of the member for a stated period not exceeding twelve months;
- (c) impose such restrictions on the licence of the member for such a period and subject to such conditions as the Committee designates;
- (d) reprimand the member, and if deemed warranted, direct that the fact of such reprimand be recorded on the register;
- (e) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates,

or any combination thereof.

Costs (6) Where the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee may order that the College reimburse the member for his costs or such portion thereof as the Discipline Committee fixes.

Stay on appeal for incompetence (7) Where the Discipline Committee revokes, suspends or restricts a licence on the grounds of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

Stay on appeal for professional misconduct (8) Where the Discipline Committee revokes, suspends or restricts the licence of a member on grounds other than for incompetence, the order shall not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned.

Service of decision of Discipline Committee (9) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the member.

Continuation on expiry of Committee membership (10) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his term of office had not expired or been terminated.

Interpretation **134.**—(1) In this section,

(a) “board of inquiry” means a board of inquiry appointed by the Executive Committee under subsection 2;

(b) “incapacitated member” means a member suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member that he no longer be permitted to practise as a pharmacist or that his practice be restricted.

Reference to board of inquiry (2) Where the Registrar receives information leading him to believe that a member may be an incapacitated member, he shall make such inquiry as he considers appropriate and report to the Executive Committee who may, upon notice to the member, appoint a board of inquiry composed of at

least two members of the College and one member of the Council appointed thereto by the Lieutenant Governor in Council who shall inquire into the matter.

(3) The board of inquiry shall make such inquiries as it ^{Examination} considers appropriate and may require the member to submit to physical or mental examination by such qualified person as the board designates and if the member refuses or fails to submit to such examination the Executive Committee on the recommendation of the Board may order that his licence be suspended until he complies.

(4) The board of inquiry shall report its findings to the ^{Hearing by Registration Committee} Executive Committee and deliver a copy thereof and a copy of any medical report obtained under subsection 3 to the member about whom the report is made and if, in the opinion of the Executive Committee, the evidence so warrants, the Executive Committee shall refer the matter to the Registration Committee to hold a hearing and the Executive Committee may, on the recommendation of the Registration Committee, suspend the member's licence until the determination of the question of his capacity becomes final.

(5) The College, the person whose capacity is being investigated ^{Parties} and any other person specified by the Committee are parties to the hearing.

(6) A legally qualified medical practitioner is not com- ^{Medical evidence} pellable to produce at the hearing his case histories, notes or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment and such report shall be signed by him and served upon the other parties to the proceedings,

- (a) where the evidence is required by the College, at least five days before the hearing commences; and
- (b) where the evidence is required by the person about whom the report is made, at least five days before its introduction as evidence,

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

**Powers of
Registration
Committee**

- (7) The Registration Committee shall, after the hearing,
- (a) make a finding as to whether or not the member is an incapacitated member; and
 - (b) where the member is found to be an incapacitated member, by order,
 - (i) revoke his licence;
 - (ii) suspend his licence for such period as the Committee considers appropriate, or
 - (iii) attach such terms and conditions to the licence as the Committee considers appropriate.

**Notice
of orders**

- (8) The Registrar may give notice of an order made under this section to such persons as he considers appropriate in the public interest.

Procedures

- (9) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration and appeals therefrom apply, *mutatis mutandis*, to proceedings of the Registration Committee under this section, except that the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

**Restoration
of licence**

- 135.**—(1) A person whose licence has been revoked for cause under this Part, or registration has been suspended or cancelled for cause under a predecessor of this Part, may apply in writing to the Registrar for the issuance of a licence or removal of the suspension, but such application shall not be made sooner than one year after the revocation or cancellation or, where the suspension is for more than one year, one year after the suspension.

**Reference
to
Discipline
Committee**

- (2) The Registrar shall refer the application to the Discipline Committee; or where the revocation or suspension was on the grounds of incapacity, to the Registration Committee, which shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Council and to the former member.

Procedures

- (3) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration, except subsection 9 of section 11 apply, *mutatis mutandis*, to proceedings

of the Registration Committee and Discipline Committee under this section.

(4) Notwithstanding subsections 1, 2 and 3, the Council by Council Direction may direct at any time that a licence be issued to a person whose licence has previously been revoked for cause or a suspension for cause be removed, subject to such terms, conditions or limitations as the Council or Executive Committee, as the case may be, considers appropriate.

136.—(1) Where the Registrar believes on reasonable and probable grounds that a member has committed an act of professional misconduct or incompetence the Registrar may by order appoint one or more persons to make an investigation to ascertain whether such act has occurred, and the person appointed shall report the result of his investigation to the Registrar.

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the practice of the member in respect of whom the investigation is being made and may upon production of his appointment enter at any reasonable time the business premises of such person and examine books, records, documents and things relevant to the subject-matter of the investigation and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to such inquiry as if it were an inquiry under that Act.

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation.

(4) Where a provincial judge is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the provincial judge may, whether or not an inspection has been made or attempted under subsection 2, issue an order authorizing the person making the investigation, together with

such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the provincial judge, by the order, authorizes the person making the investigation to make the search at night.

*Removal of
books, etc.*

(5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, records, documents or things examined under subsection 2 or 4 relating to the member whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, records or documents, but such copying shall be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member whose practice is being investigated.

*Admissi-
bility of
copies*

(6) Any copy made as provided in subsection 5 and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, record or document and its contents.

*Report of
Registrar*

(7) The Registrar shall report the results of the investigation to the Council or the Executive Committee or such other Committee as he considers appropriate.

*Matters
confidential*

137.—(1) Every person employed in the administration of this Part, including any person making an inquiry or investigation under section 136, shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry or investigation and shall not communicate any such matters to any other person except,

1972, c. 91

- (a) as may be required in connection with the administration of this Part and the regulations and by-laws or any proceedings under this Part or the regulations; or
- (b) as may be required for the enforcement of *The Health Insurance Act, 1972*;
- (c) to his counsel; or
- (d) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry or investigation except in a proceeding under this Part or the regulations or by-laws.

PHARMACIES

138.—(1) No person shall establish or operate a pharmacy unless a certificate of accreditation has been issued in respect thereof.

(2) The Registrar shall issue a certificate of accreditation and renewals thereof to any applicant therefor where the applicant and the pharmacy and its proposed operation qualify under this Part and the regulations and shall refer to the Accreditation Committee every application for a certificate or renewal that he proposes to refuse or to which he considers terms, conditions or limitations should be attached.

(3) The Accreditation Committee shall determine the eligibility of the applicant and the pharmacy or proposed pharmacy and its operation and may direct the Registrar to issue or refuse to issue the accreditation certificate or to issue the accreditation certificate subject to such terms, conditions or limitations as the Committee directs.

(4) The provisions of Part I applying to hearings, review procedures and appeals in respect of proceedings of the Registration Committee apply, *mutatis mutandis*, in respect of proceedings of the Accreditation Committee.

(5) Every certificate of accreditation issued under *The Pharmacy Act*, being chapter 348 of the Revised Statutes of Ontario, 1970, and in effect immediately before this Part comes into force continues in the same manner as if issued under this Part.

139.—(1) Where the Accreditation Committee has reason to believe that a pharmacy or its operation fails to conform to the requirements of this Part and the regulations or to any term, condition or limitation to which its certificate of accreditation is subject, the Committee may refer the matter to the Discipline Committee for a hearing and determination.

(2) Where the Accreditation Committee refers a matter to the Discipline Committee and the Discipline Committee finds

Powers of Discipline Committee
Revocation of certificate of accreditation

that a pharmacy or its operation fails to conform to the requirements of this Part and the regulations or to any term, condition or limitation to which its certificate of accreditation is subject, the Discipline Committee may,

- (a) suspend the certificate of accreditation for a stated period; or
- (b) revoke the certificate of accreditation.

Procedures (3) The provisions of Part I and this Part applying to proceedings before the Discipline Committee in respect of professional misconduct and appeals therefrom apply to the proceedings before the Discipline Committee under this section.

Cancellation for non-payment of fee (4) The Council may cancel a certificate of accreditation for non-payment of the prescribed fee after the person operating the pharmacy has been given at least two months notice of default and intention to cancel.

Closing of pharmacy **140.** Every person who permanently closes a pharmacy shall immediately remove all signs and symbols relating to the practice of pharmacy either within or outside the premises, shall remove and dispose of all drugs according to law and shall submit in writing to the Registrar such information and within such time as the regulations prescribe.

Operation of pharmacies by corporation **141.—(1)** No corporation shall own or operate a pharmacy unless the majority of the directors of the corporation are pharmacists.

Idem (2) No corporation shall own or operate a pharmacy unless a majority of each class of shares of the corporation is owned by and registered in the name of pharmacists.

Application of subs. 2 (3) For the purposes of subsection 2, shares registered in the name of the personal representative of a deceased pharmacist shall, for a period not exceeding four years, be considered to be registered in the name of a pharmacist.

Idem (4) Subsection 2 does not apply to any corporation operating a pharmacy on the 14th day of May, 1954.

Application of section (5) This section does not apply to the operation of a pharmacy by a non-profit corporation having as its objects and providing health services by members of more than one health discipline.

Where licence revoked **142.** No person whose licence as a pharmacist has been revoked for cause or while his licence is suspended for cause,

- (a) shall be employed or work in a pharmacy; or
- (b) shall act as a director or vote as a shareholder in a corporation operating a pharmacy.

143.—(1) No person other than a pharmacist or a corporation complying with the requirements of section 141 shall own or operate a pharmacy.

(2) For the purposes of the ownership of a pharmacy, or ^{Idem} for the purposes of the composition of the board of directors or ownership of shares of a corporation as required by section 141, the right to operate the pharmacy shall not be affected by,

- (a) any suspension of the licence of a pharmacist; or
- (b) the revocation of the licence of a pharmacist until after a period of six months has elapsed.

144.—(1) Where a person owning and operating a pharmacy becomes bankrupt, insolvent or makes an assignment for the benefit of creditors, he shall so notify the Registrar and the trustee in bankruptcy, liquidator or assignee, as the case may be, may own and operate the pharmacy for the purposes of the bankruptcy, insolvency or assignment.

(2) Upon the death of a pharmacist who was owning and operating a pharmacy at the time of his death, the personal representative of such deceased person may own and operate the pharmacy for a period of four years or for such further period as the Council may authorize.

(3) Every person authorized to own and operate a pharmacy under subsection 1 or 2 shall immediately upon becoming so authorized file with the Registrar evidence of his authority.

145.—(1) No person shall operate a pharmacy unless,

^{Notification to Registrar} _{Supervision of pharmacist}

- (a) it is under the supervision of a pharmacist who is physically present; and
- (b) it is managed by a pharmacist so designated by the owner of the pharmacy.

(2) Where the drugs in a pharmacy are restricted to a part of the pharmacy that is not accessible to the public in accordance with the regulations, and while such part is not in operation, clause *a* of subsection 1 does not apply to the remaining premises of the pharmacy.

(3) Every pharmacist practising in a pharmacy shall publicly display his licence in the pharmacy except during such period, if any, as the licence is under suspension.

146. No person shall in connection with a retail business use the designation,

- (a) drug store;

- (b) pharmacy;
- (c) drug department;
- (d) drug sundries;
- (e) drug or drugs;
- (f) drug mart; or
- (g) medicines,

unless the business is an accredited pharmacy.

**Inspection
of premises**

147.—(1) An inspector appointed under a by-law may enter any pharmacy or other shop in the performance of his duties under this Part at all reasonable times.

**Inspection
of records**

(2) Any record required to be kept under this Part shall be open to inspection by any inspector appointed under a by-law.

DRUGS

**Dispensing
of drugs**

148.—(1) Subject to section 153, no person other than a pharmacist or an intern or a registered pharmacy student acting under the supervision of a pharmacist who is physically present shall compound, dispense or sell any drug in a pharmacy.

**Exception
for certain
drugs**

(2) Where a pharmacist or an intern is present in the pharmacy and is available to the purchaser for consultation, subsection 1 does not apply to the sale in a pharmacy of a drug other than,

- (a) a drug requiring a prescription for sale;
- (b) a drug referred to in Part I of Schedule D; or
- (c) a drug referred to in Schedule C.

**Misrepresen-
tation**

149. No person shall knowingly sell any drug under the representation or pretence that it is a particular drug that it is not, or contains any substance that it does not.

**Labelling
of Sched. D
drugs**

150.—(1) No person shall sell a drug listed in Schedule D unless it is labelled in accordance with the regulations.

**Record
of poisons**

(2) No person shall sell by retail a drug listed in Part I of Schedule D unless a record of the sale is made in such manner as the regulations prescribe.

(3) Subsections 1 and 2 do not apply to a drug when Exception it is dispensed pursuant to a prescription or forms part of the ingredients of a prescription.

151. Drugs referred to in Schedules D, E, F, G and N ^{Mailing of drugs} shall be sent through the mail only by registered mail.

152. The manager of every pharmacy shall keep or cause ^{Records of pharmacy} to be kept a record of every purchase and sale of a drug referred to in Schedule G or N in such form or manner as the regulations may prescribe.

153.—(1) No person shall sell by retail a substance listed ^{Sale of Sched. B drugs} in Schedule B unless it is labelled in accordance with the regulations.

(2) No person other than a pharmacist shall sell by retail ^{Idem} a substance listed in Schedule B for the prevention or treatment of an ailment, disease or physical disorder, unless it is sold in the container in which it was received by the seller.

154.—(1) Subject to the regulations, no person shall sell ^{Prescription drugs} by retail any drug referred to in Schedule E, F, G or N, except on prescription given in such form, in such manner and under such conditions as the regulations prescribe.

(2) Subsection 1 does not apply to drugs referred to in Exception Part II of Schedule F that are sold in a container labelled by the manufacturer as for veterinary or agricultural use or sold in a form unsuitable for human use.

155.—(1) Every person who dispenses a drug pursuant to ^{Information noted on} a prescription shall ensure that the following information ^{prescription} is recorded on the prescription,

- (a) the name and address of the person for whom the drug is prescribed;
- (b) the name, strength (where applicable) and quantity of the prescribed drug;
- (c) the directions for use, as prescribed;
- (d) the name and address of the prescriber;
- (e) the identity of the manufacturer of the drug dispensed;
- (f) an identification number or other designation;

(g) the signature of the person dispensing the drug and, where different, also the signature of the person receiving a verbal prescription;

(h) the date on which the drug is dispensed;

(i) the price charged.

**Retention
of records**

(2) The records required under subsection 1 shall be retained for not less than six years.

**Identifica-
tion
markings**

(3) The container in which the drug is dispensed shall be marked with,

(a) the identification number that is on the prescription;

(b) the name, address and telephone number of the pharmacy in which the prescription is dispensed;

(c) the identification of the drug as to its name, its strength and its manufacturer, unless directed otherwise by the prescriber;

(d) the quantity where the drug dispensed is in solid oral dosage form;

(e) the name of the owner of the pharmacy;

(f) the date the prescription is dispensed;

(g) the name of the prescriber;

(h) the name of the person for whom it is prescribed;

(i) the directions for use as prescribed.

**Copy of
prescription**

156.—(1) Every person in respect of whom a prescription is presented to a pharmacist to be dispensed, unless otherwise directed by the prescriber, is entitled to have a copy of it marked as such, furnished to him, his agent, or a pharmacist acting on behalf of such person or agent.

**Disposal of
prescriptions**

(2) Prescriptions in a pharmacy that ceases to operate as a pharmacy shall be delivered to the persons, or agents of the persons, who presented the prescription or to another pharmacy that is reasonably readily available to such person or his agent, or failing either, to the College.

**Prescription
by doctor
out of
Ontario**

157. A pharmacist may dispense a drug pursuant to a written order signed by a physician or dentist licensed to

practise in a province in Canada other than Ontario, if in the professional judgment of the pharmacist the patient requires the drug immediately, but such order shall not be refilled.

158.—(1) Every person who dispenses a prescription may, unless otherwise directed by the prescriber, select and dispense an interchangeable pharmaceutical product other than the one prescribed, if the interchangeable pharmaceutical product dispensed is listed as interchangeable in the Parcost C.D.I., and is lower in cost than the drug prescribed.

(2) Where a drug prescribed is listed in the Parcost C.D.I. and the identity of the manufacturer is not specified by the prescriber every person who dispenses a prescription shall select and dispense an interchangeable pharmaceutical product listed in the Parcost C.D.I.

(3) No person shall knowingly supply an interchangeable product under subsection 1 or 2 at a price in excess of the cost of the lowest priced interchangeable pharmaceutical product in his inventory and the maximum dispensing fee as set out in the Parcost C.D.I.

(4) No action or other proceeding lies or shall be instituted against a prescriber or pharmacist on the grounds that an interchangeable pharmaceutical product other than the one prescribed was dispensed in accordance with this section.

159.—(1) Every person who operates or manages a pharmacy shall provide the Minister with such information from records required to be kept under section 155 as the Minister requests.

(2) The Registrar shall provide the Minister with such information respecting substances referred to in the Schedules, except Schedule A, as the Registrar possesses and the Minister requests.

160.—(1) No person shall sell by wholesale any drug for the purpose of sale by retail to any person who is not entitled to sell the drug by retail.

(2) Every person supplying drugs by wholesale in Ontario shall register with the College as a drug wholesaler and furnish the Registrar with a signed statement showing,

(a) his full name and address, or if a corporation the name of the corporation, the names and addresses of the president and directors thereof;

(b) the principal business address,

and with respect to his places of business where drugs are handled,

(c) the address of each place of business, agent or representative in Ontario;

(d) the name of the manager or person responsible for each place of business in Ontario;

(e) the date on which he proposes to commence business at each new location in Ontario.

Furnishing
of informa-
tion

(3) The information required by subsection 2 shall be furnished within thirty days after this Part comes into force and thereafter at least seven days before commencing business and any change in the information required by subsection 2 shall be furnished to the Registrar within seven days of the change.

Regulations

161.—(1) Subject to the approval of the Lieutenant Governor in Council, the Council may make regulations,

(a) prescribing the substances that are included in Schedules A, B, C, D, E, F, G and N for the purpose of this Part;

(b) naming substances for the purposes of clause *d* of subsection 1 of section 116 and specifying the provisions of this Act that shall apply in respect of such substances;

(c) naming publications for the purposes of clause *d* of subsection 1 of section 116;

(d) prescribing the percentage of any substance to be contained in any preparation referred to in any Schedule;

(e) prescribing the manner in which prescriptions shall be given in respect of the drugs referred to in Schedules E, F, G and N and the conditions under which such prescriptions may be given;

(f) authorizing the refilling of prescriptions without further prescription and prescribing the conditions under which prescriptions may be refilled without further prescription;

- (g) prescribing the manner in which records shall be kept of the purchase and sale of the drugs referred to in Schedules D, G and N;
- (h) pertaining to the transfer of prescriptions and the records to be kept by the transferor and the transferee;
- (i) designating substances listed in Schedule D that may be sold by persons not otherwise authorized under this Part and authorizing the sale of such substances by any persons or classes of persons not otherwise authorized under this Part and prescribing the conditions under which such substances shall be sold by such persons or classes of persons;
- (j) prescribing the labelling of substances listed in Schedule B for the purposes of section 153;
- (k) providing for the establishment and maintenance of patient record systems;
- (l) prescribing the types of containers to be used for containing any drug and the designs, specifications and labelling of containers used for containing any drug;
- (m) prescribing standards for accreditation of pharmacies including maintenance, operation, space, equipment and facilities required therefor;
- (n) providing for applications for certificates of accreditation of pharmacies, and the issuance of such certificates and their expiration and renewal and requiring the payment of fees therefor and prescribing the amounts thereof;
- (o) providing for the filing with the Registrar of information respecting the location of the place of practice and the residential address of pharmacists, the name and address of pharmacies in the Province of Ontario including the name and address of the owner and the manager of such pharmacies, and any changes thereof, and the form of such information and the time of filing;
- (p) providing for the information, instruments or documents to be filed with the Registrar by persons opening, acquiring, relocating or closing a pharmacy, the form thereof and the time of filing;
- (q) prescribing standards for the subdivision of premises so that drugs are restricted to a specified area and

so that the part of the premises to which the drugs are restricted may be rendered not accessible to the public, while the other part remains open;

Idem

(r) regulating the handling, location and storage of drugs in a pharmacy.

(2) The Lieutenant Governor in Council may make regulations,

(a) regulating the use of containers in which drugs may be dispensed and designating organizations to test, certify and designate containers that meet standards approved by the Minister for such purposes as may be specified in the regulations, and requiring the use of containers that are so certified and designated except under such circumstances as are prescribed;

(b) prescribing the Parcost C.D.I. for the purpose of this Part.

ENFORCEMENT

Restraining orders

162.—(1) Where it appears to the College that any person does not comply with any provision of this Part or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the College may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

Appeal

(2) An appeal lies to the Supreme Court from an order made under subsection 1.

Recovery of charges

163. A person who sells any drug in contravention of this Part or the regulations is not entitled to recover any charges in respect thereof.

Surrender of cancelled licence or accreditation certificate

164. Where a licence or certificate of accreditation is revoked or cancelled, the former holder thereof shall forthwith deliver the licence or certificate to the Registrar.

Penalties

165.—(1) Every person who is in contravention of section 124 is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$2,000 and for each subsequent offence to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both.

(2) Every person who not being a member uses an occupational designation prescribed by the regulations to be used by members or a like designation is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$1,000 and for each subsequent offence to a fine of not more than \$2,000.

(3) Every person who contravenes any provision of this Act or the regulations for which no penalty is otherwise provided is guilty of an offence and on summary conviction is liable to a fine not exceeding \$2,000.

166.—(1) Every owner or manager of a pharmacy is liable for every offence against this Part committed by any person in his employ or under his supervision with his permission, consent or approval, express or implied, and every director of a corporation operating a pharmacy is liable for every offence against this Part committed by any person in the employ of the corporation with his permission, consent or approval, express or implied.

(2) Where any person operates a pharmacy contrary to this Part or the regulations, the owner and manager of such pharmacy, or either of them, or any director of a corporation operating a pharmacy, may be proceeded against, and prosecution or conviction of either of them is not a bar to prosecution or conviction of the other.

167. In any prosecution under this Part,

Evidence

- (a) a certificate as to the analysis of any drug or poison purporting to be signed by a Food and Drug Analyst or Provincial Analyst is admissible in evidence as *prima facie* proof of the facts stated therein without proof of the appointment or signature of the analyst;
- (b) any article labelled as containing any drug is admissible in evidence as *prima facie* proof that the article contains the drug described on the label;
- (c) the label of the container of a drug dispensed pursuant to a prescription is admissible in evidence as *prima facie* proof that the drug named in the prescription was dispensed;
- (d) evidence that a drug is found in a shop or place in which business is transacted is admissible as *prima facie* proof that it was kept for sale;

(e) evidence of the publishing of a sign, title or advertisement containing the name of an establishment or the owner thereof is admissible in evidence as *prima facie* proof that the sign, title or advertisement was published by the owner of the establishment.

Repeals

168.—(1) The following Acts are repealed:

1. *The Pharmacy Act*, being chapter 348 of the Revised Statutes of Ontario, 1970.
2. *The Pharmacy Amendment Act, 1972*, being chapter 99.
3. *The Pharmacy Amendment Act, 1973*, being chapter 126.

References

(2) Any reference in any Act or regulation to a pharmaceutical chemist registered under *The Pharmacy Act* shall be deemed to be a reference to a pharmacist licensed under this Part and any reference to *The Pharmacy Act* shall be deemed to be a reference to this Part.

MISCELLANEOUS

Commencement

169.—(1) This Act, except sections 1 to 5 and sections 7 to 168, comes into force on the day it receives Royal Assent.

Idem

(2) Sections 1 to 5 and sections 7 to 168, come into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

170. This Act may be cited as *The Health Disciplines Act, 1974*.

BILL 22

The Health Disciplines Act, 1974

1st Reading

April 2nd, 1974

2nd Reading

April 30th, 1974

3rd Reading

THE HON. F. S. MILLER
Minister of Health

(Reprinted as amended by the
Social Development Committee)

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BILL 22

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4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 Elizabeth II, 1974

The Health Disciplines Act, 1974

Ontario, Legislative Assembly

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THE HON. F. S. MILLER
Minister of Health

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

TABLE OF CONTENTS

	SEC.	PAGE
PART I — General.....	1 - 19	1
PART II — Dentistry.....	20 - 44	10
PART III — Medicine.....	45 - 68	28
PART IV — Nursing.....	69 - 90	47
PART V — Optometry.....	91 - 115	61
PART VI — Pharmacy.....	116 - 168	79

BILL 22**1974****The Health Disciplines Act, 1974**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I**GENERAL**

1.—(1) In this Act,

*Interpre-
tation*

- (a) “Board” means the Health Disciplines Board established under section 6;
- (b) “health discipline” means a health discipline to which a Part of this Act applies;
- (c) “Minister” means the Minister of Health;
- (d) “regulations” means the regulations made under this Act.

(2) In this Part,

Idem

- (a) “College” means the corporate body of a health discipline or group of health disciplines as established for that discipline or group in a Part of this Act;
- (b) “complaints committee” means the complaints committee of a health discipline or group of health disciplines as established for that discipline or group in a Part of this Act;
- (c) “Council” means the governing body of a health discipline or group of health disciplines as established for that discipline or group in a Part of this Act;

(d) "discipline committee" means the discipline committee of a health discipline or group of health disciplines as established for that discipline or group in a Part of this Act;

(e) "registration" means,

(i) a licence to practise a health discipline or group of health disciplines issued under a Part of this Act requiring a licence to practise, or

(ii) a certificate respecting the practising of a health discipline or group of health disciplines issued under a Part of this Act,

the issuance of which is required to be entered on the register of the appropriate College, and "registered" has a corresponding meaning.

References
to hearings
1971, c. 47

(3) Nothing in this Act shall be construed to require a hearing to be held within the meaning of *The Statutory Powers Procedure Act, 1971* unless the holding of a hearing is specifically referred to.

Administration
of Act

2. The Minister is responsible for the administration of this Act.

Duties of
Minister

3.—(1) It is the duty of the Minister to ensure that the activities of health disciplines are effectively regulated and co-ordinated in the public interest, to have appropriate standards of practice developed and ensure that these are maintained and to ensure that the rights of individuals to the services provided by health disciplines of their choice are maintained and to these ends to,

(a) inquire into or direct the appropriate Council or Councils to inquire into the state of the practice of one or more health disciplines in any locality or institution;

(b) require Councils to provide such reports and information as the Minister requires for his purposes including information from the registers of the Colleges;

(c) review proposals by a Council for changes in legislation or regulations of concern to that Council;

- (d) consider the by-laws of Councils and provide advice and guidance to Councils with respect to the proposed implementation or revision of such by-laws;
 - (e) request a Council to make, amend or revoke regulations respecting any of the matters specified in its applicable Part; and
 - (f) review legislation respecting the provision of health services by health disciplines.
- (2) Where the Minister requests in writing that a Council make, amend or revoke a regulation under clause e of sub-section 1 and the Council has failed to do so within sixty days after the request, the Lieutenant Governor in Council may make the regulation, amendment or revocation specified in the request.
- (3) The Minister may appoint such advisory committees as he considers desirable and appropriate to assist him in carrying out his duties under this Act.
- 4.** Where the Minister or a Council proposes changes to be made in legislation or regulations respecting a health discipline, the Minister shall distribute the proposals to all health disciplines and all health disciplines are entitled to make submissions to the Minister with respect to such proposals.

5. Where a College has incurred expenses in complying with the directions of the Minister under this Part, the Minister may, out of moneys appropriated therefor by the Legislature, make appropriate payments to reimburse the College in whole or in part for the expenses incurred.

6.—(1) There is hereby established a body to be known as the Health Disciplines Board.

(2) The Board shall be composed of not fewer than five and not more than seven members who shall be appointed by the Lieutenant Governor in Council on the recommendation of the Minister, and the Lieutenant Governor in Council shall designate one of the members of the Board to be chairman and one to be vice-chairman.

(3) No person who is employed in the public service of Ontario or of any agency of the Crown, or who is or has been a member of a Council or who is or has been registered under this Act or any other Act governing a health practice shall be a member of the Board.

- Term** (4) The members of the first Board may be appointed for a term of one, two or three years and thereafter appointments and reappointments shall be for a term of three years.
- Vacancies** (5) Every vacancy on the Board caused by the death, resignation or incapacity of a member, may be filled by the appointment by the Lieutenant Governor in Council of a person to hold office for the remainder of the term of such member.
- Quorum** (6) A majority of the members of the Board constitutes a quorum.
- Remuneration** (7) The members of the Board shall be paid such remuneration and expenses as are determined by the Lieutenant Governor in Council.
- Seal** (8) The Board may prescribe and adopt a seal.
- Board employees R.S.O. 1970, c. 386** (9) Such employees as are necessary to carry out the duties of the Board under this Act shall be employed under *The Public Service Act*.
- Duties of Board** **7.—(1)** The Board shall,
 - (a) conduct such hearings and perform such duties as are assigned to it by or under this or any other Act; and
 - (b) submit an annual report on its activities to the Minister and which shall include such additional information as the Minister may require and the Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.
 (2) The Board may obtain expert or professional advice in connection with a hearing or complaint but the adviser shall be a person independent of,
 - (a) the parties in the case of a hearing; or
 - (b) the complainant and the member complained against in the case of a complaint,
 and in the case of a hearing, the nature of the advice shall be made known to the parties in order that they may make submissions as to the advice.
- Complaints** **8.—(1)** Where a complaints committee has made a disposition of a complaint respecting a member of its College in accordance with the provisions of the applicable Part of this

Act governing that College, the Registrar of the College shall send to the member and to the complainant by prepaid first class mail, a copy of the written decision made by the complaints committee and reasons therefor, if any, together with notice advising the complainant of his right of review under subsection 2.

(2) A complainant or the member complained against who is not satisfied with the decision made by a complaints committee disposing of a complaint, except a decision to refer a matter to the discipline committee, may within twenty days of receipt of the written decision request the Board to review the decision and the Board shall require the Registrar of the College to transmit to the Board within fifteen days of the Board's request, a record of the investigation and all such documents and things upon which the decision was based and the Board shall review the decision after giving the complainant an opportunity to state his complaint and the member an opportunity to state his answer thereto, either personally, by his agent or in writing. Review of complaints

9. Where a complaint respecting a member of a College has not been disposed of by the complaints committee of the College within sixty days after the complaint is made, the Board upon application therefor may require the complaints committee to make an investigation and, where the investigation of the complaint has not been undertaken, completed and reported on to the Board by the committee within sixty days after the Board's request, the Board shall undertake such investigation and possesses all the powers of investigation that the complaints committee or the Registrar has in the applicable Part of this Act. Investigation of complaint by Board

10.—(1) The Board may after review or investigation of a complaint under section 8 or 9 refer the complaint to the complaints committee and the Board may, Powers of Board after review or investigation of complaint

- (a) confirm the decision, if any, made by the complaints committee;
- (b) make such recommendations to the complaints committee as the Board considers appropriate; or
- (c) require the complaints committee to take such action or proceedings as the committee is authorized to undertake under the applicable Part of this Act.

(2) Three members of the Board constitute a quorum for purposes of investigation or review of a complaint under section 8 or 9 or a hearing under section 11. Board quorum

(3) The Board shall give its decision and reasons therefor in writing to the complainant and the member complained against. Decision and reasons

Notice of proposal to refuse registration

11.—(1) Where a registration committee proposes to refuse to grant registration to an applicant, or proposes to attach terms, conditions or limitations to a registration, the Registrar on behalf of the committee shall serve notice of the proposal of the committee, together with written reasons therefor, on the applicant or registrant and a copy thereof to the Board.

Exemptions

(2) Subsection 1 does not apply to a refusal to grant registration to a person who was previously registered and whose registration was suspended or revoked as a result of a decision of a discipline committee.

Notice requiring hearing or review

(3) A notice under subsection 1 shall inform the applicant or registrant that he is entitled to a hearing by the Board or to a review by the Board of his application and documentary evidence in support thereof without oral evidence, if he mails or delivers within fifteen days after the notice under subsection 1 is served on him, notice in writing to the Board requiring a hearing or such review by the Board, as he specifies.

Powers of registration committee where hearing or review

(4) Where an applicant or registrant does not require a hearing or review by the Board in accordance with subsection 3, the Board shall so notify the registration committee making the proposal and the committee may carry out the proposal stated in its notice under subsection 1.

Findings of fact

1971, c. 47

(5) The findings of fact of the Board pursuant to a hearing or review shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of *The Statutory Powers Procedure Act, 1971*.

Procedures on hearings

(6) The provisions of subsections 2 to 5 and subsections 7 and 8 of section 12 apply *mutatis mutandis* to proceedings before the Board under this section.

Powers of Board upon hearing or review

(7) The Board shall, after the hearing or review,

(a) confirm the proposed decision of the registration committee; or

(b) require the registration committee to permit the applicant to take qualifying examinations or additional training as a condition for registration, or both as specified by the registration committee; or

(c) require the registration committee to direct the Registrar to register the applicant on any appro-

priate register subject to such conditions as the Board considers appropriate in cases where the Board finds that the applicant meets the requirements for registration and that the committee has exercised its powers improperly; or

- (d) refer the matter back to the registration committee for further consideration and the Board may make such recommendations as it considers appropriate in the circumstances.

(8) The registration committee and the applicant or ^{Parties} registrant are parties to proceedings before the Board under this section.

(9) Any party to proceedings before the Board under this ^{Appeals} section may appeal from its decision or order to the Supreme Court in accordance with the rules of court and the provisions of section 13 apply *mutatis mutandis* as if it were an appeal from a decision or order of a discipline committee.

12.—(1) In proceedings before the discipline committee ^{Parties to discipline} of a College, the College and the member of the College ^{proceedings} whose conduct is being investigated in the proceedings are parties to the proceedings.

(2) A member whose conduct is being investigated in ^{Examination of documentary evidence} proceedings before a discipline committee shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which shall be given in evidence at the hearing.

(3) Members of a discipline committee holding a hearing ^{Members holding hearing not to have taken part in investigation, etc.} shall not have taken part before the hearing in any investigation of the subject-matter of the hearing other than as a member of the Council considering the referral of the matter to the discipline committee or at a previous hearing of the committee, and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the committee may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

(4) Notwithstanding anything in *The Statutory Powers Procedure Act, 1971*, hearings of the discipline committee shall be held *in camera*, but, if the person whose conduct is being investigated requests otherwise by a notice delivered to the Registrar before the day fixed for the hearing, the committee shall conduct the hearing in public except where,

- (a) matters involving public security may be disclosed; or
- (b) the possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public.

Recording of evidence

(5) The oral evidence taken before a discipline committee shall be recorded and, if so required, copies or a transcript thereof shall be furnished only to the parties at their own cost.

Evidence 1971, c. 47

(6) Notwithstanding *The Statutory Powers Procedure Act, 1971* nothing is admissible in evidence before a discipline committee that would be inadmissible in a court in a civil case and the findings of a discipline committee shall be based exclusively on evidence admitted before it.

Only members at hearing to participate in decision

(7) No member of a discipline committee shall participate in a decision of the committee pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties.

Release of documentary evidence

(8) Documents and things put in evidence at a hearing of a discipline committee shall, upon the request of the person who produced them, be released to him by the committee within a reasonable time after the matter in issue has been finally determined.

Appeal to court

13.—(1) Any party to proceedings before a discipline committee may appeal from its decision or order to the Supreme Court in accordance with the rules of court.

Powers of court on appeal

(2) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the committee appealed from and may exercise all powers of the committee and may direct the committee or the College to take any action which the committee or the College may take and as the court considers proper, and for such purposes the court may substitute its opinion for that of the committee, or the court may refer the matter back to the committee for rehearing, in whole or in part, in accordance with such directions as the court considers proper.

Service of notice

14.—(1) Except where otherwise provided, any notice or document required by this Act to be served may be served personally or by prepaid first class mail addressed to the person to whom notice is to be given at his last known address and, where notice is served by mail, the service shall be deemed to have been made on the fifth day after the day of mailing unless the person to whom notice is given establishes that he, acting in good faith, through absence,

accident, illness or other cause beyond his control, did not receive the notice, or did not receive the notice until a later date.

(2) Every member of the Health Disciplines Board and of the discipline committee of a College has power to administer oaths and affirmations for the purposes of any of its proceedings.

15. Any statement containing information from the records required to be kept by a Registrar under any Part of this Act, purporting to be certified by the Registrar under the seal of the College is admissible in evidence in all courts as *prima facie* proof of the facts stated therein without proof of the appointment or signature of the Registrar and without proof of the seal.

16. No action or other proceeding for damages shall be instituted against the Board, a College, a Council, a committee or any member of the Board, Council or committee, or any officers, servants, agents or appointees of the Board, or a College for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act, a regulation or a by-law, or for any neglect or default in the performance or exercise in good faith of such duty or power.

17. No duly registered member of a College is liable to any action arising out of negligence or malpractice in respect of professional services requested or rendered unless such action is commenced within one year from the date when the person commencing the action knew or ought to have known the fact or facts upon which he alleges negligence or malpractice.

18.—(1) Any person who makes or causes to be made any wilful falsification in any matter relating to a register or issues a false certificate or document with respect to registration is guilty of an offence and on summary conviction is liable to a fine of not more than \$5,000.

(2) Any person who wilfully procures or attempts to procure himself to be registered under this Act by knowingly making any false representation or declaration or by making a fraudulent representation or declaration, either orally or in writing, is guilty of an offence and on summary conviction is liable to a fine of not more than \$5,000 and every person knowingly aiding and assisting him therein is guilty of an offence and on summary conviction is liable to a fine of not more than \$5,000.

Onus of
proof
respecting
registration

19. Where registration under this Act is required to permit the lawful doing of any act or thing, if in any prosecution it is proven that the accused has done such act or thing, the burden of proving that he was so registered under this Act rests upon the accused.

PART II

DENTISTRY

Interpre-
tation

20.—(1) In this Part,

- (a) “by-laws” means the by-laws made under this Part;
- (b) “College” means the Royal College of Dental Surgeons of Ontario;
- (c) “Council” means the Council of the College;
- (d) “licence” means a licence for the practice of dentistry issued under this Part;
- (e) “member” means a member of the College;
- (f) “practice of dentistry” means any professional service usually performed by a dentist or a dental surgeon, and includes,
 - (i) the diagnosis or treatment of, and the prescribing, treating or operating for the prevention, alleviation or correction of any disease, pain, deficiency, deformity, defect, lesion, disorder or physical condition of, in or from any human tooth, jaw or adjacent structure or tissue or any injury thereto,
 - (ii) the making, producing, reproducing, constructing, fitting, furnishing, supplying, altering or repairing or prescribing or advising the use of any prosthetic denture, bridge, appliance or thing for any of the purposes indicated in subclause i, to be used in, upon or in connection with any human tooth, jaw or associated structure or tissue or in the treatment of any condition thereof, or replacing, improving or supplementing any human tooth, associated structure or tissue, and
 - (iii) the taking or making, or the giving of advice or assistance or the providing of facilities for

the taking or making of any impression, bite, cast or design preparatory to, or for the purpose of, or with a view to the making, producing, reproducing, constructing, fitting, furnishing, supplying, altering or repairing of any such prosthetic denture, bridge, appliance or thing;

(g) "Registrar" means the Registrar of the College;

(h) "regulations" means the regulations made under this Part.

(2) The practice of dentistry is a health discipline to which ^{Health discipline} this Part applies.

21.—(1) The Royal College of Dental Surgeons of Ontario ^{Royal College of Dental Surgeons} continued is continued as a body corporate without share capital with power to acquire, hold and dispose of real and personal property for the purposes of this Part.

(2) The objects of the College are,

Objects

- (a) to regulate the practice of dentistry and to govern its members in accordance with this Act, the regulations and the by-laws;
- (b) to establish, maintain and develop standards of knowledge and skill among its members;
- (c) to establish, maintain and develop standards of qualification and practice for the practice of dentistry;
- (d) to establish, maintain and develop standards of professional ethics among its members;
- (e) to administer this Part and perform such other duties and exercise such other powers as are imposed or conferred on the College by or under any Act,

in order that the public interest may be served and protected.

22.—(1) Every person licensed by the College is a member ^{Membership} of the College subject to any term, condition or limitation to which the licence is subject.

(2) A member may resign his membership by filing with ^{Resignation of} the Registrar his resignation in writing and his licence is ^{membership} thereupon cancelled, subject to the continuing jurisdiction

of the College in respect of any disciplinary action arising out of his professional conduct while a member.

**Cancellation
for default
of fees**

(3) The Registrar may cancel a licence for non-payment of any fee prescribed by the regulations after giving the member at least two months notice of the default and intention to cancel, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

**Council of
College**

23.—(1) The Board of Directors of the College is continued as the Council of the College, which shall be the governing body and board of directors of the College and shall manage and administer its affairs.

**Composition
of Council**

(2) The Council shall be composed of,

(a) not fewer than nine and not more than twelve persons who are members elected in the number and manner determined by the regulations;

(b) not fewer than three and not more than five persons who are not members of a Council under this Act or registered or licensed under this Act or any other Act governing a health practice and are appointed by the Lieutenant Governor in Council; and

(c) one person who is appointed by the faculty of dentistry of each university in Ontario that conducts a course in dentistry and is authorized to grant degrees in dentistry, such person to be appointed from among the members of the faculty.

**Remunera-
tion of lay
members**

(3) The persons appointed under clause *b* of subsection 2 shall be paid, out of moneys appropriated therefor by the Legislature, such expenses and remuneration as is determined by the Lieutenant Governor in Council.

**Expiration
of appoint-
ment**

(4) The appointment of every person appointed under subsection 2 expires at the first meeting of the Council following the election of members to Council held next after the effective date of his appointment, and a person whose appointment expires is eligible for reappointment.

(5) Every member who,

(a) practises in Ontario; and

(b) is not in default of payment of the annual fee prescribed by the regulations,

is qualified to vote at an election of members of the Council.

(6) The Council shall elect a President and Vice-President from among its members. President and Vice-President

(7) The Council shall appoint during pleasure a Registrar and such other officers and servants as may from time to time be necessary in the opinion of the Council to perform the work of the College. Registrar, Treasurer, Secretary and staff

(8) A majority of the members of the Council constitute a quorum. Quorum

(9) The members of the Council who were elected under *The Dentistry Act*, being chapter 108 of the Revised Statutes of Ontario, 1970 and were in office immediately before this Part comes into force shall continue in office and shall be deemed to be the members referred to in clause *a* of subsection 2 until the expiration of the term for which they were elected or until the office otherwise becomes vacant. Continuation of Council members under R.S.O. 1970, c. 108

24. In addition to his powers and duties under Part I, Powers of Minister the Minister may,

- (a) review the activities of the Council;
- (b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;
- (c) advise the Council with respect to the implementation of this Part and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures.

25. Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations, Regulations

- (a) fixing the number of members to be elected to the Council and establishing electoral districts and regional representation for elections;
- (b) respecting and governing the qualifications, nomination, election and term of office of the members to be elected, and controverted elections;
- (c) prescribing the conditions disqualifying elected members from sitting on the Council and governing the filling of vacancies on the Council;
- (d) respecting any matter ancillary to the provisions of this Part with regard to the issuing, suspension and revocation of licences;

- (e) prescribing classes of licences and governing the requirements and qualifications for the issuing of licences or any class thereof and prescribing the terms and conditions thereof;
- (f) providing for the maintenance and inspection of registers of persons permitted to practise;
- (g) governing standards of practice for the profession;
- (h) prescribing the records that shall be kept respecting patients;
- (i) requiring and providing for the inspection and examination of the office, records and equipment of members in connection with their practice;
- (j) regulating the compounding, dispensing and sale of drugs by members and the containers and labelling therefor, prescribing the records that shall be kept and requiring reports to the Minister respecting such compounding, dispensing and sale;
- (k) defining classes of specialists in the various branches of dentistry, prescribing the qualifications required, providing for the suspension or revocation of any such designation, and for the regulation and prohibition of the use of terms, titles, or designations by members indicating specialization in any branch of dentistry;
- (l) authorizing persons other than members to perform specified acts in the practice of dentistry under the supervision or direction of a member;
- (m) prohibiting the practice of dentistry where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
- (n) defining professional misconduct for the purposes of this Part;
- (o) providing for a program of continuing education of members to maintain their standard of competence and requiring members to participate in such continuing education;
- (p) regulating, controlling and prohibiting the use of terms, titles or designations by members or groups

- or associations of members in respect to their practices;
- (g) respecting the reporting and publication of decisions in disciplinary matters;
 - (r) providing for the compilation of statistical information on the supply, distribution and professional activities of members and requiring members to provide the information necessary to compile such statistics, for any purpose that may tend to advance scientific knowledge and maintain the standards of practice of dentistry;
 - (s) respecting the duties and authority of the Registrar;
 - (t) requiring the payment of annual fees by members and fees for licensing, examinations and continuing education, including penalties for late payment, and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof;
 - (u) prescribing forms for the purposes of this Part and providing for their use;
 - (v) providing for the exemption of any member from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable.

26.—(1) The Council may pass by-laws relating to the By-laws administrative and domestic affairs of the College not inconsistent with this Act and the regulations and without limiting the generality of the foregoing,

- (a) prescribing the seal of the College;
- (b) providing for the execution of documents by the College;
- (c) respecting banking and finance;
- (d) fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;
- (e) providing procedures for the election of President and Vice-President of the College, the filling of a vacancy in those offices, and prescribing the duties of the President and Vice-President;

- (f) respecting the calling, holding and conducting of meetings of the Council and the duties of members of Council;
- (g) prescribing the remuneration of the members of the Council and committees, other than persons appointed by the Lieutenant Governor in Council, and providing for the payment of necessary expenses of the Council and committees in the conduct of their business;
- (h) providing for the appointment, composition, powers and duties of such additional or special committees as may be required;
- (i) delegating to the Executive Committee such powers and duties of the Council as are set out in the by-law, other than the power to make, amend or revoke regulations and by-laws;
- (j) providing for a code of ethics;
- (k) providing for the appointment of inspectors for the purposes of this Part;
- (l) prescribing forms and providing for their use;
- (m) providing procedures for the making, amending and revoking of the by-laws;
- (n) respecting management of the property of the College;
- (o) respecting the application of the funds of the College and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;
- (p) providing for the entering into arrangements by the College for its members respecting indemnity for professional liability and respecting the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members and exempting members or any class thereof from all or part of any such levy;
- (q) respecting membership of the College in any national organization with similar functions, the payment of an annual assessment and provision for representatives at meetings;

- (r) respecting all of the things that are considered necessary for the attainment of the objects of the College and the efficient conduct of its affairs.
- (2) A copy of the by-laws made under subsection 1 and^{Idem} amendments thereto,
 - (a) shall be forwarded to the Minister;
 - (b) shall be available for public inspection in the office of the College.

(3) Any by-law or resolution signed by all the members <sup>Signed by
laws and
resolutions</sup> of the Council is as valid and effective as if passed at a meeting of the Council duly called, constituted and held for that purpose.

27.—(1) Where a prosthetic denture is supplied, altered or repaired by a member or under the supervision of a member as set out in subsection 11 of section 4 of *The Denture Therapists Act, 1974*, the laboratory costs incurred in respect of the supplying, altering or repairing of the prosthetic denture and all fees for services in respect thereof shall be rendered by the member and the account therefor shall show such laboratory costs separately from such fees and separately from all other charges and fees.

(2) No person is liable to pay an account to which sub-<sup>Liability
for payment</sup> section 1 applies until the account is made to comply with the requirements of subsection 1.

28.—(1) No person shall engage in or hold himself out as <sup>Licence to
practise</sup> engaging in the practice of dentistry unless he is licensed under this Part.

(2) For the purposes of subsection 1, proof of the performance of one act in practice of dentistry on one occasion is sufficient to establish engaging in the practice of dentistry.

(3) Subsection 1 does not apply to a student of dentistry <sup>Exception
re students</sup> who practises dentistry within a prescribed training program under the supervision of a member who is physically present.

(4) Nothing done in the practice of denture therapy or ^{Idem} the practice of supervised denture therapy as defined in *The Denture Therapists Act, 1974* by a denture therapist licensed or provisionally licensed thereunder shall be deemed to be a contravention of this section.

Conflict with other health discipline

(5) A licence shall be deemed to authorize a member to engage in the practice of dentistry, notwithstanding that any part of such practice is included in the practice of any other health discipline.

Application of Part VI

(6) Part VI does not apply in respect of the compounding and dispensing and sale of drugs by a member for his own patients in accordance with this Part and the regulations.

Establishment of committees

29.—(1) The Council shall establish and appoint as hereinafter provided the following committees,

- (a) Executive Committee;
- (b) Registration Committee;
- (c) Complaints Committee;
- (d) Discipline Committee,

and may establish such other committees as the Council from time to time considers necessary.

Vacancies

(2) Where one or more vacancies occur in the membership of the Council or any committee, the members remaining in office constitute the Council or committee so long as their number is not fewer than the prescribed quorum.

Executive Committee

30.—(1) The Executive Committee shall be composed of the President and Vice-President of the Council and not more than three other members of the Council, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

Quorum

(2) A majority of the members of the Executive Committee constitutes a quorum.

Duties

(3) The Executive Committee shall perform such functions of the Council as are delegated to it by the Council, the by-laws or this Part and may take action upon any other matter that requires immediate attention between meetings of the Council, other than to make, amend or revoke a regulation or by-law.

31.—(1) The Registration Committee shall be composed of three persons who are members of the Council, one of whom shall be a person appointed to the Council by the Lieutenant Governor in Council.

(2) The Council shall name one member of the Registration Committee to be Chairman.

(3) A majority of the members of the Registration Committee constitutes a quorum.

32.—(1) The Registrar shall issue a licence to any applicant therefor who is qualified under this Part and the regulations and has passed such examinations as the Council may set or approve, and the Registrar shall refer to the Registration Committee every application for a licence that he proposes to refuse or to which he considers terms, conditions or limitations should be attached.

(2) The Registration Committee,

Powers and
duties of
Registration
Committee

(a) shall determine the eligibility of applicants for licences and may require an applicant to take and pass such additional examinations as the Council may set or approve and pay such fee therefor as the Registration Committee fixes or to take such additional training as the Registration Committee specifies; and

(b) may exempt an applicant from any licensing requirement.

(3) The Registration Committee may direct the Registrar to issue or refuse to issue licences or to issue licences subject to such terms, conditions and limitations as the Committee specifies.

(4) The Registration Committee may review the qualifications of any member and may impose a further term, condition or limitation on his licence pending the demonstration of such standard of competence through the completion of such experience, courses of study, or continuing education as the committee specifies.

(5) The Registrar shall maintain one or more registers in which is entered every person who is licensed to practise dentistry, identifying any specialist status and the terms, conditions and limitations attached to the licence, and shall

note on the register every revocation, suspension and cancellation of a licence or recognition of specialist status and such other information as the Registration Committee or Discipline Committee directs.

Continuation
of licences
R.S.O. 1970,
c. 108

33. Every licence issued under *The Dentistry Act*, being chapter 108 of the Revised Statutes of Ontario, 1970, and in effect immediately before this Part comes into force continues in the same manner as if issued under this Part.

Complaints
Committee

34.—(1) The Complaints Committee shall be composed of three persons who are members of the Council, one of whom shall be a person appointed to the Council by the Lieutenant Governor in Council.

Idem

(2) No person who is a member of the Discipline Committee shall be a member of the Complaints Committee.

Chairman

(3) The Council shall name one member of the Complaints Committee to be its Chairman.

Quorum

(4) A majority of the members of the Complaints Committee constitutes a quorum.

Duties

35.—(1) The Complaints Committee shall consider and investigate complaints made by members of the public or members of the College regarding the conduct or actions of any member of the College, but no action shall be taken by the Committee under subsection 2 unless,

- (a) a written complaint has been filed with the Registrar and the member whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations he may wish to make concerning the matter; and
- (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

Idem

(2) The Committee in accordance with the information it receives may,

- (a) direct that the matter be referred, in whole or in part, to the Discipline Committee or to the Executive Committee for the purposes of section 38; or
- (b) direct that the matter not be referred under clause (a); or

(c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Part or the regulations or by-laws.

(3) The Committee shall give its decision in writing to the Registrar for the purposes of section 8 and, where the decision is made under clause b of subsection 2, its reasons therefor.

36.—(1) The Discipline Committee shall be composed of eight members of the Council of whom two shall be persons appointed to the Council by the Lieutenant Governor in Council.

(2) The Council shall appoint one of the members of the Discipline Committee to be Chairman.

(3) The Chairman of the Discipline Committee may assign a panel of five members of the Committee to hold a hearing of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

(4) Three members of a panel assigned under subsection 3, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum for a hearing and all disciplinary decisions require the vote of a majority of members of the Discipline Committee presiding at the hearing.

(5) Where a panel of the Discipline Committee commences a hearing and the member thereof who is appointed to the Council by the Lieutenant Governor in Council becomes unable to continue to act, the remaining members may complete the hearing notwithstanding his absence.

(6) Notwithstanding section 35, the Council or the Executive Committee may direct the Discipline Committee to hold a hearing and determine any specified allegation of professional misconduct or incompetence on the part of a member.

37.—(1) The Discipline Committee shall,

Duties of
Discipline
Committee

(a) when so directed by the Council, Executive Committee or Complaints Committee, hear and determine allegations of professional misconduct or incompetence against any member;

(b) hear and determine matters referred to it under section 35, 36 or 39; and

(c) perform such other duties as are assigned to it by the Council.

(2) In the case of hearings into allegations of professional misconduct or incompetence, the Discipline Committee shall,

- (a) consider the allegations, hear the evidence and ascertain the facts of the case;
- (b) determine whether upon the evidence and the facts so ascertained the allegations have been proved;
- (c) determine whether in respect of the allegations so proved the member is guilty of professional misconduct or incompetence;
- (d) determine the penalty to be imposed as hereinafter provided in cases in which it finds the member guilty of professional misconduct or of incompetence.

Professional misconduct

(3) A member may be found guilty of professional misconduct by the Committee if,

- (a) he has been found guilty of an offence relevant to his suitability to practise upon proof of such conviction;
- (b) he has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.

Incompetence

(4) The Discipline Committee may find a member to be incompetent if in its opinion he has displayed in his professional care of a patient a lack of knowledge, skill or judgment or disregard for the welfare of the patient of a nature or to an extent that demonstrates he is unfit to continue in practice.

Powers of Discipline Committee

(5) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence it may by order,

- (a) revoke the licence of the member or withdraw recognition of his specialist status, or both;
- (b) suspend the licence of the member or recognition of his specialist status, or both, for a stated period;
- (c) impose such restrictions on the licence of the member for such a period and subject to such conditions as the Committee designates;
- (d) reprimand the member, and if deemed warranted, direct that the fact of such reprimand be recorded on the register;
- (e) impose such fine as the Committee considers appropriate to a maximum of \$5,000 to be paid by the member to the Treasurer of Ontario for payment into the Consolidated Revenue Fund;
- (f) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates,

or any combination thereof.

(6) Where the Discipline Committee is of the opinion ^{Costs} that the commencement of the proceedings was unwarranted, the Committee may order that the College reimburse the member for his costs or such portion thereof as the Discipline Committee fixes.

(7) Where the Discipline Committee revokes, suspends or ^{Stay on appeal for incompetence} restricts a licence or recognition of specialist status on the grounds of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

(8) Where the Discipline Committee revokes, suspends or ^{Stay on appeal for professional misconduct} restricts the licence or recognition of specialist status of a member on a ground other than for incompetence, the order shall not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned.

(9) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the member.

(10) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his term of office had not expired or been terminated.

38.—(1) In this section,

^{Interpre-tation}

(a) “board of inquiry” means a board of inquiry appointed by the Executive Committee under sub-section 2;

(b) “incapacitated member” means a member suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member that he no longer be permitted to practise or that his practice be restricted.

(2) Where the Registrar receives information leading him ^{Reference to board of inquiry} to believe that a member may be an incapacitated member, he shall make such inquiry as he considers appropriate and report to the Executive Committee who may, upon notice to

the member, appoint a board of inquiry composed of at least two members of the College and one member of the Council appointed thereto by the Lieutenant Governor in Council who shall inquire into the matter.

Examination

(3) The board of inquiry shall make such inquiries as it considers appropriate and may require the member to submit to physical or mental examination by such qualified person as the board designates and if the member refuses or fails to submit to such examination the board may order that his licence be suspended until he complies.

Hearing by Registration Committee

(4) The board of inquiry shall report its findings to the Executive Committee and deliver a copy thereof and a copy of any medical report obtained under subsection 3 to the member about whom the report is made and if, in the opinion of the Executive Committee, the evidence so warrants, the Executive Committee shall refer the matter to the Registration Committee to hold a hearing and may suspend the member's licence until the determination of the question of his capacity becomes final.

Parties

(5) The College, the person whose capacity is being investigated and any other person specified by the Registration Committee are parties to the hearing.

Medical evidence

(6) A legally qualified medical practitioner is not compellable to produce at the hearing his case histories, notes or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment and such report shall be signed by him and served upon the other parties to the proceedings,

- (a) where the evidence is required by the College, at least five days before the hearing commences; and
- (b) where the evidence is required by the person about whom the report is made, at least five days before its introduction as evidence,

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

Powers of Registration Committee

(7) The Registration Committee shall, after the hearing,

- (a) make a finding as to whether or not the member is an incapacitated member; and

- (b) where the member is found to be an incapacitated member by order,
 - (i) revoke his licence,
 - (ii) suspend his licence for such period as the Committee considers appropriate, or
 - (iii) attach such terms and conditions to the licence as the Committee considers appropriate.

(8) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration and appeals therefrom apply, *mutatis mutandis*, to proceedings of the Registration Committee under this section, except that the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

39.—(1) A person whose licence has been revoked or suspended for cause under this Part, or a predecessor of this Part, may apply in writing to the Registrar for the issuance of a licence or removal of the suspension, but such application shall not be made sooner than one year after the revocation or, where the suspension is for more than one year, one year after the suspension.

(2) The Registrar shall refer the application to the Discipline Committee or, where the revocation or suspension was on the grounds of incapacity, to the Registration Committee which shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Council and to the former member.

(3) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration except subsection 9 of section 11 apply, *mutatis mutandis*, to proceedings of the Registration Committee and Discipline Committee under this section.

40.—(1) Where the Registrar believes on reasonable and probable grounds that a member has committed an act of professional misconduct or incompetence, the Registrar may by order appoint one or more persons to make an investigation to ascertain whether such an act has occurred, and the person appointed shall report the result of his investigation to the Registrar.

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make

1971, c. 49

the investigation may inquire into and examine the practice of the member in respect of whom the investigation is being made and may, upon production of his appointment, enter at any reasonable time the business premises of such person and examine books, records, documents and things relevant to the subject-matter of the investigation, and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to such inquiry as if it were an inquiry under that Act.

Obstruction
of
investigator

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation.

Search
warrant

(4) Where a provincial judge is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the provincial judge may, whether or not an inspection has been made or attempted under subsection 2, issue an order authorizing the person making the investigation, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the provincial judge, by the order, authorizes the person making the investigation to make the search at night.

Removal of
books, etc.

(5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, records, documents or things examined under subsection 2 or 4 relating to the member whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, records or documents, but such copying shall be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member whose practice is being investigated.

Admissi-
bility
of copies

(6) Any copy made as provided in subsection 5 and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding

or prosecution as *prima facie* proof of the original book, record or document and its contents.

(7) The Registrar shall report the results of the investigation to the Council or the Executive Committee or such other Committee as he considers appropriate. Report of Registrar

41.—(1) Every person employed in the administration of this Part, including any person making an inquiry or investigation under section 40 and any member of the Council or a Committee, shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry or investigation under section 40 and shall not communicate any such matters to any other person except, Matters confidential

- (a) as may be required in connection with the administration of this Part and the regulations and by-laws or any proceedings under this Part or the regulations;
- (b) as may be required for the enforcement of *The Health Insurance Act, 1972*, c. 91;
- (c) to his counsel; or
- (d) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry or investigation except in a proceeding under this Part or the regulations or by-laws. Testimony in civil suit

42.—(1) Where it appears to the College that any person does not comply with any provision of this Part or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the College may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit. Restraining orders

(2) An appeal lies to the Supreme Court from an order made under subsection 1. Appeal

Penalties

43.—(1) Every person who is in contravention of section 28 is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both.

Idem

(2) Every person who, not being a member, uses an occupational designation prescribed by the regulations to be used by members or a like designation is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$1,000 and for each subsequent offence to a fine of not more than \$2,000.

Idem

(3) Any person who obstructs a person appointed to make an investigation under section 40 in the course of his duties is guilty of an offence and on summary conviction is liable to a fine not exceeding \$2,000.

Repeals

44.—(1) *The Dentistry Act*, being chapter 108 of the Revised Statutes of Ontario, 1970, except section 12 thereof, *The Dentistry Amendment Act, 1972*, being chapter 141 and *The Dentistry Amendment Act, 1974*, being chapter 35, are repealed.

Idem

(2) For the purposes of section 12 of *The Dentistry Act*, the Council shall be deemed to be the Board referred to therein.

References

(3) Any reference in any Act or regulation to *The Dentistry Act* shall be deemed to be a reference to this Part.

PART III

MEDICINE

Interpre-
tation

45.—(1) In this Part,

- (a) “by-laws” means the by-laws made under this Part;
- (b) “College” means the College of Physicians and Surgeons of Ontario;
- (c) “Council” means the Council of the College;
- (d) “licence” means a licence for the practice of medicine issued under this Part;
- (e) “member” means a member of the College;

- (f) "practice of medicine" includes the practice of surgery and obstetrics;
- (g) "prescribed" means prescribed by the regulations or by-laws made under this Part;
- (h) "Registrar" means the Registrar of the College;
- (i) "regulations" means the regulations made under this Part.

(2) The practice of medicine is a health discipline to which ^{Health discipline} this Part applies.

46.—(1) The College of Physicians and Surgeons of Ontario ^{College of Physicians and Surgeons continued} is continued as a body corporate without share capital with power to acquire, hold and dispose of real and personal property for the purposes of this Part.

(2) The objects of the College are,

Objects

- (a) to regulate the practice of medicine and to govern its members in accordance with this Act, the regulations and the by-laws;
- (b) to establish, maintain and develop standards of knowledge and skill among its members;
- (c) to establish, maintain and develop standards of qualification and practice for the practice of medicine;
- (d) to establish, maintain and develop standards of professional ethics among its members;
- (e) to administer this Part and perform such other duties and exercise such other powers as are imposed or conferred on the College by or under any Act;
- (f) such other objects relating to human health care as the Council considers desirable,

in order that the public interest may be served and protected.

47.—(1) Every person licensed by the College is a member ^{Membership in the} of the College subject to any term, condition or limitation ^{College} to which the licence is subject.

(2) A member may resign his membership by filing with ^{Resignation of} the Registrar his resignation in writing and his licence is membership thereupon cancelled subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

Cancellation
for default
of fees

(3) The Registrar may cancel a licence for non-payment of any prescribed fee after giving the member at least two months notice of the default and intention to cancel subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct as a member.

Council of
the College

48.—(1) The Council of the College is continued and shall be the governing body and board of directors of the College and shall manage and administer its affairs.

Composition
of Council

(2) The Council shall be composed of,

- (a) one person who is appointed by the faculty of medicine of each university in Ontario that conducts a course in medicine and is authorized to grant degrees in medicine, such person to be appointed from among the members of the faculty;
- (b) not fewer than four and not more than six persons who are not members of a Council under this Act or registered or licensed under this Act or any other Act governing a health practice, and are appointed by the Lieutenant Governor in Council; and
- (c) not fewer than twelve and not more than sixteen persons who are members and are elected by the members in the manner provided by the regulations.

Remuner-
ation
of lay
members

(3) The persons appointed under clause *b* of subsection 2 shall be paid out of moneys appropriated therefor by the Legislature such expenses and remuneration as is determined by the Lieutenant Governor in Council.

Expiration
of appoint-
ment

(4) The appointment of every person appointed under subsection 2 expires at the first regular meeting of the Council following the election of members to Council held next after the effective date of his appointment, and a person whose appointment expires is eligible for reappointment.

Qualifi-
cations
to vote

(5) Every member who is,

- (a) resident in Ontario;
- (b) licensed to practise medicine and not limited to practising for educational purposes only; and
- (c) not in default of payment of the prescribed annual fee,

is qualified to vote at an election of members of the Council.

(6) The Council shall elect annually a President and Vice-President from among its members.

(7) The Council shall appoint during pleasure a Registrar and such other officers and servants as may from time to time be necessary or desirable in the opinion of the Council to perform the work of the College.

(8) A majority of the members of the Council constitutes Quorum a quorum.

(9) The members of the Council who were elected under *The Medical Act*, being chapter 268 of the Revised Statutes of Ontario, 1970 and were in office immediately before this Part comes into force shall continue in office and shall be deemed to be the members referred to in clause *c* of subsection 2 until the expiration of the term for which they were elected or until the office otherwise becomes vacant.

49. In addition to his powers and duties under Part I, ^{Powers of} Minister the Minister may,

- (a) review the activities of the Council;
- (b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;
- (c) advise the Council with respect to the implementation of this Part and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures.

50. Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations,

- (a) fixing the number of members to be elected to the Council and establishing electoral districts for elections;
- (b) respecting and governing the qualifications, nomination, election and term of office of the members to be elected to the Council, and controverted elections;
- (c) prescribing the conditions disqualifying elected members from sitting on the Council and governing the filling of vacancies on the Council;

- (d) respecting any matter ancillary to the provisions of this Part with regard to the issuing, suspension and revocation of licences;
- (e) prescribing classes of licences and governing the requirements and qualifications for the issuing of licences or any class thereof and prescribing the terms and conditions thereof;
- (f) providing for the maintenance and inspection of registers of persons permitted to practise and for the issuance of certificates of standing by the Registrar;
- (g) governing standards of practice for the profession;
- (h) defining classes of specialists in the various branches of medicine, prescribing the qualifications required, providing for the suspension or revocation of any such designation, and for the regulation and prohibition of the use of terms, titles, or designations by members indicating specialization in any branch of medicine;
- (i) regulating the compounding, dispensing and sale of drugs by members and the containers and labelling therefor, prescribing the records that shall be kept and requiring reports to the Minister respecting such compounding, dispensing and sale;
- (j) governing the designation of life members of the College and prescribing their rights and privileges;
- (k) authorizing persons other than members to perform specified acts in the practice of medicine under the supervision or direction of a member;
- (l) prohibiting the practice of medicine where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
- (m) defining professional misconduct for the purposes of this Part;
- (n) providing for a program of continuing education of members to maintain their standard of competence and requiring members to participate in such continuing education;
- (o) regulating, controlling and prohibiting the use of terms, titles or designations by members or groups or associations of members in respect of their practices;

- (p) prescribing the minimum number of members who may constitute a clinic and the minimum range of medical services that shall be provided in a clinic;
- (q) respecting the reporting and publication of decisions in disciplinary matters;
- (r) requiring and providing for the inspection and examination of books, accounts, reports and medical records of members in connection with their practice;
- (s) providing for the compilation of statistical information on the supply, distribution and professional activities of members and requiring members to provide the information necessary to compile such statistics;
- (t) respecting the duties and authority of the Registrar;
- (u) requiring the payment of fees by members and fees for licensing, examinations and continuing education, including penalties for late payment and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof;
- (v) prescribing forms and providing for their use;
- (w) providing for the exemption of any member from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable.

51.—(1) The Council may pass by-laws relating to the ^{By-laws} administrative and domestic affairs of the College not inconsistent with this Act and the regulations and without limiting the generality of the foregoing,

- (a) prescribing the seal of the College;
- (b) providing for the execution of documents by the College;
- (c) respecting banking and finance;
- (d) fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;
- (e) providing procedures for the election of President and Vice-President of the College, the filling of a vacancy in those offices, and prescribing the duties of the President and Vice-President;
- (f) respecting the calling, holding and conducting of meetings of the Council and the duties of members of Council;

- (g) respecting the calling, holding and conducting of meetings of the membership of the College;
- (h) prescribing the remuneration of the members of the Council and committees other than persons appointed by the Lieutenant Governor in Council and providing for the payment of necessary expenses of the Council and committees in the conduct of their business;
- (i) providing for the appointment, composition, powers and duties of such additional or special committees as may be required;
- (j) delegating to the Executive Committee such powers and duties of the Council as are set out in the by-law, other than the power to make, amend or revoke regulations and by-laws;
- (k) providing for a code of ethics;
- (l) prescribing forms and providing for their use;
- (m) providing procedures for the making, amending and revoking of the by-laws;
- (n) respecting management of the property of the College;
- (o) respecting the application of the funds of the College and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;
- (p) providing for the entering into arrangements by the College for its members respecting indemnity for professional liability and respecting the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members and exempting members or any class thereof from all or part of any such levy;
- (q) providing for the establishment, maintenance and administration of a benevolent fund for needy practitioners in Ontario and the dependants of deceased members;
- (r) respecting membership of the College in a national organization with similar functions, the payment of an annual assessment and provision for representatives at meetings;
- (s) respecting all of the things that are considered necessary for the attainment of the objects of the College and the efficient conduct of its affairs.

(2) A copy of the by-laws made under subsection 1 and ^{Idem} amendments thereto,

- (a) shall be forwarded to the Minister;
- (b) shall be forwarded to each member; and
- (c) shall be available for public inspection in the office of the College.

(3) Any by-law or resolution signed by all members of the Council is as valid and effective as if passed at a meeting of the Council duly called, constituted and held for the purpose.

52.—(1) No person shall engage in or hold himself out as engaging in the practice of medicine unless he is licensed under this Part.

(2) For the purposes of subsection 1,

Exceptions

- (a) rendering first aid or temporary assistance in an emergency without fee; or
- (b) the administration of household remedies by members of the patient's household,

shall be deemed not to be engaging in the practice of medicine.

(3) Subsection 1 does not apply to a student of medicine ^{Students} excepted engaging in a curriculum of studies at a medical school in a university in Ontario.

(4) For the purposes of this section, proof of the performance of one act in practice of medicine on one occasion is sufficient to establish engaging in the practice of medicine.

(5) A member or person authorized by the regulations may engage in the practice of medicine, notwithstanding that any part of such practice is included in the practice of any other health discipline.

(6) Part VI does not apply in respect of the compounding and dispensing and sale of drugs by a member for his own patients in accordance with this Part and the regulations.

(7) Nothing in this Part shall be construed to affect the treatment of human ailments by the use of prayer or spiritual means in the exercise of a religion in accordance with the tenets of an established church by the members thereof.

53.—(1) The Council shall establish and appoint as herein-after provided the following committees,

Establishment of committees

- (a) Executive Committee;
- (b) Registration Committee;

- (c) Complaints Committee;
- (d) Discipline Committee;
- (e) Fitness to Practise Committee,

and may establish such other committees as the Council from time to time considers necessary.

Medical
Review
Committee
1972, c. 91

(2) The Council may give the Medical Review Committee established under *The Health Insurance Act, 1972*, such other duties as the Council considers appropriate and that are not inconsistent with its duties under that Act.

Vacancies

(3) Where one or more vacancies occur in the membership of the Council or any committee, the members remaining in office constitute the Council or committee so long as their number is not fewer than the prescribed quorum.

Executive
Committee

54.—(1) The Executive Committee shall be composed of,

- (a) the President, who shall be Chairman of the Committee;
- (b) the Vice-President; and
- (c) three persons who are members of the Council, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

Quorum

(2) A majority of the members of the Executive Committee constitutes a quorum.

Duties

(3) The Executive Committee shall perform such functions of the Council as are delegated to it by the Council, the by-laws or this Part and, subject to ratification by the Council at its next ensuing meeting, may take action upon any other matter that requires immediate attention between meetings of the Council, other than to make, amend or revoke a regulation or by-law.

Registration
Committee

55.—(1) The Registration Committee shall be composed of,

- (a) one member of the Council who was appointed to the Council by a university;
- (b) two members of the Council who were elected to the Council;
- (c) one member of the Council who was appointed to the Council by the Lieutenant Governor in Council; and
- (d) the President and Vice-President, *ex officio*.

(2) The Council shall name one member of the Registration Committee to be Chairman.

(3) A majority of the members of the Registration Committee constitutes a quorum.

56.—(1) The Registrar shall issue a licence to any applicant therefor who is qualified under this Part and the regulations and has passed such examinations as the Council may set or approve, and the Registrar shall refer to the Registration Committee every application for a licence that he proposes to refuse or to which he considers terms, conditions or limitations should be attached.

(2) The Registration Committee,

- (a) shall determine the eligibility of applicants for licences and may require an applicant to take and pass such additional examinations as the Council may set or approve and pay such fees therefor as the Registration Committee fixes or to take such additional training as the Registration Committee specifies; and
- (b) may exempt an applicant from any licensing requirement

(3) The Registration Committee may direct the Registrar to issue or refuse to issue licences or to issue licences subject to such terms, conditions and limitations as the Committee specifies.

(4) The Registration Committee may review the qualifications of any member and may impose a further term, condition or limitation on his licence pending the demonstration of such standard of competence through the completion of such experience, courses of study or continuing education as the Committee specifies.

(5) The Registrar shall maintain one or more registers in which is entered every person who is licensed to practise medicine, identifying any specialist status and the terms, conditions and limitations attached to the licence, and shall note on the register every revocation, suspension and cancellation of a licence or recognition of specialist status and such other information as the Registration Committee or Discipline Committee directs.

(6) Every licence issued under *The Medical Act*, being chapter 268 of the Revised Statutes of Ontario, 1970 and in effect immediately before this Part comes into force continues in the same manner as if issued under this Part.

57.—(1) The Complaints Committee shall be composed of,

- (a) two persons who are members of the College;

- (b) one member of the Council who was appointed to the Council by a university;
- (c) one member of the Council who was appointed to the Council by the Lieutenant Governor in Council.

Idem (2) No person who is a member of the Discipline Committee shall be a member of the Complaints Committee.

Chairman (3) The Council shall name one member of the Complaints Committee to be its Chairman.

Quorum (4) A majority of the members of the Complaints Committee constitutes a quorum.

Duties **58.**—(1) The Complaints Committee shall consider and investigate complaints made by members of the public or members of the College regarding the conduct or actions of any member of the College, but no action shall be taken by the Committee under subsection 2 unless,

- (a) a written complaint has been filed with the Registrar and the member whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations he may wish to make concerning the matter; and
- (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

Idem (2) The Committee in accordance with the information it receives may,

- (a) direct that the matter be referred, in whole or in part, to the Discipline Committee or to the Executive Committee for the purposes of section 62; or
- (b) direct that the matter not be referred under clause *a*; or
- (c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Part or the regulations or by-laws.

Decision and reasons (3) The Committee shall give its decision in writing to the Registrar for the purposes of section 8 and, where the decision is made under clause *b* of subsection 2, its reasons therefor.

Discipline Committee **59.**—(1) The Discipline Committee shall be composed of ten members of the Council of whom two shall be persons appointed to the Council by the Lieutenant Governor in Council.

(2) The Council shall appoint one of the members of the Discipline Committee to be Chairman.

(3) The Chairman of the Discipline Committee may assign a panel of five members of the Committee to hold a hearing of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

(4) Where a panel of the Discipline Committee commences a hearing and the member thereof who is appointed to the Council by the Lieutenant Governor in Council becomes unable to continue to act, the remaining members may complete the hearing notwithstanding his absence.

(5) Three members of a panel assigned under subsection 3, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum for a hearing and all disciplinary decisions require the vote of a majority of members of the Discipline Committee presiding at the hearing, but in the event of a tie vote the chairman shall have a second or casting vote.

(6) Notwithstanding section 58, the Council or the Executive Committee may direct the Discipline Committee to hold a hearing and determine any specified allegation of professional misconduct or incompetence on the part of a member.

60.—(1) The Discipline Committee shall,

Duties of
Discipline
Committee

- (a) when so directed by the Council, Executive Committee or Complaints Committee, hear and determine allegations of professional misconduct or incompetence against any member;
- (b) hear and determine matters referred to it under section 58, 59 or 63; and
- (c) perform such other duties as are assigned to it by the Council.

(2) In the case of hearings into allegations of professional misconduct or incompetence, the Discipline Committee shall,

- (a) consider the allegations, hear the evidence and ascertain the facts of the case;
- (b) determine whether upon the evidence and the facts so ascertained the allegations have been proved;
- (c) determine whether in respect of the allegations so proved the member is guilty of professional misconduct or incompetence;
- (d) determine the penalty to be imposed as hereinafter provided in cases in which it finds the member guilty of professional misconduct or of incompetence.

Professional misconduct

(3) A member may be found guilty of professional misconduct by the Committee if,

- (a) he has been found guilty of an offence relevant to his suitability to practise, upon proof of such conviction;
- (b) if his rights or privileges under the *Narcotic Control Act* (Canada) or the *Food and Drugs Act* (Canada) or the regulations under either of them have been restricted or withdrawn, unless by his own request, upon proof thereof;
- (c) he has been guilty in the opinion of the Discipline Committee of professional misconduct as defined

Incompetence

(4) The Discipline Committee may find a member to be incompetent if in its opinion he has displayed in his professional care of a patient a lack of knowledge, skill or judgment or disregard for the welfare of the patient of a nature or to an extent that demonstrates he is unfit to continue in practice.

Powers of Discipline Committee

(5) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence it may by order,

- (a) revoke the licence of the member, or withdraw recognition of his specialist status, or both;
- (b) suspend the licence of the member or recognition of his specialist status, or both, for a stated period;
- (c) impose such restrictions on the licence of the member for such a period and subject to such conditions as the Committee designates;
- (d) reprimand the member, and if deemed warranted, direct that the fact of such reprimand be recorded on the register;
- (e) impose such fine as the Committee considers appropriate to a maximum of \$5,000 to be paid by the member to the Treasurer of Ontario for payment into the Consolidated Revenue Fund;
- (f) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates,

or any combination thereof.

Costs

(6) Where the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee may order that the College reimburse the member for his costs or such portion thereof as the Discipline Committee fixes.

R.S.C. 1970.
cc. N-1,
F-27

(7) Where the Discipline Committee revokes, suspends or restricts a licence or recognition of specialist status on the grounds of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

(8) Where the Discipline Committee revokes, suspends or restricts the licence or recognition of specialist status of a member on grounds other than for incompetence, the order shall not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned.

(9) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the member.

(10) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his term of office had not expired or been terminated.

61.—(1) The Fitness to Practise Committee shall be composed of twelve persons, of whom at least four shall be members of the Council and eight may be members of the College who are not members of the Council.

(2) The Council shall appoint one of the members of the Fitness to Practise Committee who is a member of the Council to be chairman of the Committee.

(3) The chairman of the Fitness to Practise Committee may assign a panel of three members to hold a hearing, of whom at least one shall be a member who is a member of the Council, and such panel constitutes a quorum of the Committee for a hearing.

(4) All decisions of the Fitness to Practise Committee require the vote of a majority of the members presiding at the hearing.

62.—(1) In this section,

Interpre-
tion

(a) “board of inquiry” means a board of inquiry appointed by the Executive Committee under subsection 2;

(b) "incapacitated member" means a member suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member that he no longer be permitted to practise or that his practice be restricted.

Reference
to board of
inquiry

(2) Where the Registrar receives information leading him to believe that a member may be an incapacitated member, he shall make such inquiry as he considers appropriate and report to the Executive Committee who may, upon notice to the member, appoint a board of inquiry composed of at least two members of the College and one member of the Council appointed thereto by the Lieutenant Governor in Council who shall inquire into the matter.

Examina-
tion

(3) The board of inquiry shall make such inquiries as it considers appropriate and may require the member to submit to physical or mental examination by such qualified person as the board designates and if the member refuses or fails to submit to such examination the board may order that his licence be suspended until he complies.

Hearing by
Fitness to
Practise
Committee

(4) The board of inquiry shall report its findings to the Executive Committee and deliver a copy thereof and a copy of any medical report obtained under subsection 3 to the member about whom the report is made and if, in the opinion of the Executive Committee, the evidence so warrants, the Executive Committee shall refer the matter to the Fitness to Practise Committee to hold a hearing and may suspend the member's licence until the determination of the question of his capacity becomes final.

Parties

(5) The College, the person whose capacity is being investigated and any other person specified by the Fitness to Practise Committee are parties to the hearing.

Medical
evidence

(6) A legally qualified medical practitioner is not compellable to produce at the hearing his case histories, notes or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment and such report shall be signed by him and served upon the other parties to the proceedings,

(a) where the evidence is required by the College, at least five days before the hearing commences; and

(b) where the evidence is required by the person about whom the report is made, at least five days before its introduction as evidence,

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

(7) The Fitness to Practise Committee shall, after the hearing,

Powers of
Fitness to
Practise
Committee

- (a) make a finding as to whether or not the member is an incapacitated member; and
- (b) where the member is found to be an incapacitated member, by order,
 - (i) revoke his licence,
 - (ii) suspend his licence for such period as the Committee considers appropriate, or
 - (iii) attach such terms and conditions to the licence as the Committee considers appropriate.

(8) The provisions of Part I and this Part applying to Procedures proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration and appeals therefrom apply, *mutatis mutandis*, to proceedings of the Fitness to Practise Committee under this section, except that the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

63.—(1) A person whose licence has been revoked or suspended for cause under this Part, or under a predecessor of this Part, may apply in writing to the Registrar for the issuance of a licence or removal of the suspension, but such application shall not be made sooner than one year after the revocation or, where the suspension is for a period of more than one year, one year after the suspension.

(2) The Registrar shall refer the application to the Discipline Committee, or, when the revocation or suspension was on the grounds of incapacity, to the Fitness to Practise Committee, which shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Council and to the former member.

(3) The provisions of Part I and this Part applying to Procedures proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration, except

subsection 9 of section 11, apply, *mutatis mutandis*, to proceedings of the Fitness to Practise Committee and Discipline Committee under this section.

Direction
by Council
to issue
licence

(4) Notwithstanding subsections 1, 2 and 3, the Council or the Executive Committee may direct at any time that a licence be issued to a person whose licence has previously been revoked for cause or a suspension for cause be removed, subject to such terms, conditions or limitations as the Council or Executive Committee, as the case may be, considers appropriate.

Investiga-
tion of
members

64.—(1) Where the Registrar believes on reasonable and probable grounds that a member has committed an act of professional misconduct or incompetence the Registrar may, with the approval of the Executive Committee, by order appoint one or more persons to make an investigation to ascertain whether such act has occurred, and the person appointed shall report the result of his investigation to the Registrar.

Powers of
investigator

1971, c. 49

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the practice of the member in respect of whom the investigation is being made and may upon production of his appointment, enter at any reasonable time the business premises of such person and examine books, records, documents and things relevant to the subject-matter of the investigation and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to such inquiry as if it were an inquiry under that Act.

Obstruction
of
investigator

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation.

Search
warrant

(4) Where a provincial judge is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investiga-

tion, the provincial judge may, whether or not an inspection has been made or attempted under subsection 2, issue an order authorizing the person making the investigation, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the provincial judge, by the order, authorizes the person making the investigation to make the search at night.

(5) Any person making an investigation under this section^{Removal of books, etc.} may, upon giving a receipt therefor, remove any books, records, documents or things examined under subsection 2 or 4 relating to the member whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, records or documents, but such copying shall be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member whose practice is being investigated.

(6) Any copy made as provided in subsection 5 and certified to be a true copy by the person making the investigation^{Admissibility of copies} is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, record or document and its contents.

(7) The Registrar shall report the results of the investigation to the Council or the Executive Committee or to such other committee as he considers appropriate.^{Report of Registrar}

65.—(1) Every person employed in the administration of this Part, including any person making an inquiry or investigation under section 64, and any member of the Council or a Committee, shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry or investigation under section 64 and shall not communicate any such matters to any other person except,

(a) as may be required in connection with the administration of this Part and the regulations and by-laws or any proceedings under this Part or the regulations; or

(b) as may be required for the enforcement of *The Health Insurance Act, 1972*, c. 91

Testimony
in civil
suit

- (c) to his counsel; or
- (d) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry or investigation except in a proceeding under this Part or the regulations or by-laws.

Restraining
orders

66.—(1) Where it appears to the College that any person does not comply with any provision of this Part or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the College may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

Appeal

(2) An appeal lies to the Supreme Court from an order made under subsection 1.

Penalties

67.—(1) Every person who is in contravention of section 52 is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$2,000 and for each subsequent offence to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both.

'Idem

(2) Every person who not being a member uses an occupational designation prescribed by the regulations to be used by members or a like designation is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$1,000 and for each subsequent offence to a fine of not more than \$2,000.

'Idem

(3) Any person who obstructs a person appointed to make an investigation under section 64 in the course of his duties is guilty of an offence and on summary conviction is liable to a fine not exceeding \$2,000.

Repeals

68.—(1) *The Medical Act*, being chapter 268 of the Revised Statutes of Ontario, 1970, and *The Medical Amendment Act, 1973*, being chapter 129, are repealed.

References

(2) Any reference in any Act or regulation to *The Medical Act* shall be deemed to be a reference to this Part.

PART IV

NURSING

69.—(1) In this Part,Interpre-
tation

- (a) “by-laws” means the by-laws made under this Part;
 - (b) “certificate” means a current certificate issued under this Part authorizing the holder to hold himself out as competent to practise as a registered nurse or registered nursing assistant;
 - (c) “College” means the College of Nurses of Ontario;
 - (d) “Council” means the Council of the College;
 - (e) “Director” means the Director of the College;
 - (f) “member” means a member of the College;
 - (g) “register” means a register maintained by the Director under this Part, and “registered” and “registration” have corresponding meanings;
 - (h) “registered nurse” and “registered nursing assistant” means a person who is the holder of a certificate as a registered nurse or registered nursing assistant, respectively;
 - (i) “regulations” means the regulations made under this Part.
- (2) The performance of nursing services by a registered ^{Health discipline} nurse or a registered nursing assistant is a health discipline to which this Part applies.

70.—(1) The College of Nurses of Ontario is continued ^{College of Nurses of Ontario} as a body corporate without share capital with power to ^{continued} acquire, hold and dispose of real and personal property for the purposes of this Part.

(2) The objects of the College are,

Objects

- (a) to regulate the practice of nursing and to govern its members in accordance with this Act, the regulations and the by-laws;
- (b) to establish, maintain and develop standards of knowledge and skill among its members;

- (c) to establish, maintain and develop standards of qualification and practice for the practice of nursing;
- (d) to establish, maintain and develop standards of professional ethics among its members;
- (e) to administer this Part and perform such other duties and exercise such other powers as are imposed or conferred on the College by or under any Act;
- (f) such other objects relating to human health care as the Council considers desirable,

in order that the public interest may be served and protected.

**Membership
in the
College**

71.—(1) Every person who is the holder of a certificate is a member of the College subject to any term, condition or limitation to which his certificate is subject.

**Resignation
of member-
ship**

(2) A member may resign his membership by filing with the Director his resignation in writing and his certificate is thereupon cancelled, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

**Cancellation
for default
of fees**

(3) The Director may cancel a certificate for non-payment of any prescribed fee after giving the member at least one month's notice of the default and intention to cancel, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

**Council of
the College**

72.—(1) The Council of the College is continued and shall be the governing body and board of directors of the College and shall manage and administer its affairs.

**Composition
of Council**

- (2) The Council shall be composed of,
 - (a) not fewer than eighteen and not more than twenty-five persons, consisting of registered nurses and registered nursing assistants in the proportions determined by the regulations, who are resident or employed in Ontario and are elected by the members in the manner provided by the regulations; and
 - (b) not fewer than six and not more than eight persons who are not members of a Council under this Act or registered or licensed under this Act or any other Act governing a health practice, and who are appointed by the Lieutenant Governor in Council.

**Remunera-
tion of lay
appointees**

(3) The persons appointed under clause *b* of subsection 2 shall be paid out of moneys appropriated therefor by the Legislature such expenses and remuneration as is determined by the Lieutenant Governor in Council.

(4) The appointment of every person appointed under subsection 2 expires at the first regular meeting of the Council following the election of members to Council held next after the effective date of his appointment, and a person whose appointment expires is eligible for reappointment. Expiration of appointment

(5) Every member who is,

Qualifications to vote

(a) resident or employed in Ontario; and

(b) not in default of payment of the annual fee prescribed by the regulations,

is qualified to vote at an election of members of the Council.

(6) The Council shall elect annually a President and Vice-President from among its members. President and Vice-President

(7) The Council shall appoint during pleasure a Director and such other officers as may from time to time be necessary in the opinion of the Council to perform the work of the College and the Director shall be deemed to be the Registrar for the purposes of Part I. Director and staff

(8) The Council shall meet at least twice a year. Meetings of Council

(9) A majority of the members of the Council constitutes a quorum. Quorum

(10) The members of the Council who were elected under *The Nurses Act*, being chapter 301 of the Revised Statutes of Ontario, 1970 and were in office immediately before this R.S.O. 1970, c. 301 Part comes into force shall continue in office and shall be deemed to be the members referred to in clause *a* of subsection 2 until the expiration of the term for which they were elected or until the office otherwise becomes vacant. Continuation of Council members under

73. In addition to his powers and duties under Part I, the Minister may, Powers of Minister

(a) review the activities of the Council;

(b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;

(c) advise the Council with respect to the implementation of this Part and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures.

Regulations

74. Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations,

- (a) fixing the number of members to be elected to the Council, the proportions thereof who shall be registered nurses and registered nursing assistants and establishing the regional and other representation for elections;
- (b) respecting and governing the nomination, election and term of office of the members to be elected to the Council, the filling of vacancies on the Council and controverted elections;
- (c) respecting any matter ancillary to the provisions of this Part with regard to the issuing, renewal, suspension and revocation of certificates;
- (d) providing for the expiration of certificates and governing the requirements and qualifications for the issuing and renewal of certificates;
- (e) providing for the maintenance and inspection of registers;
- (f) governing standards of practice for the profession;
- (g) prohibiting the practice of nursing by members where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
- (h) defining professional misconduct for the purposes of this Part;
- (i) providing for a program for the continuing education of members to maintain their standard of competence and requiring members to participate in such continuing education;
- (j) respecting the reporting and publication of decisions in disciplinary matters;
- (k) providing for the compilation of statistical information on the supply, distribution and professional activities of members and requiring members to provide the information necessary to compile such statistics;
- (l) respecting the duties and authority of the Director;
- (m) requiring the payment of annual fees by members and fees for certification and examinations, and prescribing the amounts thereof;

- (n) prescribing forms and providing for their use;
- (o) providing for the exemption of any member from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable.

75.—(1) The Council may pass by-laws relating to the By-laws administrative and domestic affairs of the College not inconsistent with this Act and the regulations and without limiting the generality of the foregoing,

- (a) prescribing the seal of the College;
- (b) providing for the execution of documents by the College;
- (c) respecting banking and finance;
- (d) fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;
- (e) providing procedures for the election of President and Vice-President of the College, the filling of a vacancy in those offices, and prescribing the duties of the President and Vice-President;
- (f) respecting the calling, holding and conducting of meetings of the Council and the duties of members of Council;
- (g) respecting the calling, holding and conducting of meetings of the membership of the College;
- (h) prescribing the remuneration of the members of the Council and committees other than persons appointed by the Lieutenant Governor in Council and providing for the payment of necessary expenses of the Council and committees in the conduct of their business;
- (i) providing for the appointment, composition, powers and duties of such additional or special committees as may be required;
- (j) delegating to the Executive Committee such powers and duties of the Council as are set out in the by-law, other than the power to make, amend or revoke regulations and by-laws;
- (k) providing for a code of ethics;
- (l) prescribing forms and providing for their use;

- (m) providing procedures for the making, amending and revoking of the by-laws;
- (n) respecting management of the property of the College;
- (o) respecting the application of the funds of the College and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;
- (p) providing for the entering into arrangements by the College for its members respecting indemnity for professional liability and respecting the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members and exempting members or any class thereof from all or part of any such levy;
- (q) respecting membership of the College in a national organization with similar functions, the payment of an annual assessment and provision for representatives at meetings;
- (r) respecting all of the things that are considered necessary for the attainment of the objects of the College and the efficient conduct of its affairs.

Distribution
of by-laws

- (2) A copy of the by-laws made under subsection 1 and amendments thereto,
 - (a) shall be forwarded to the Minister;
 - (b) shall be forwarded to each member; and
 - (c) shall be available for public inspection in the office of the College.

Use of
titles

76.—(1) No person shall hold himself out as competent to practise as a registered nurse or as a registered nursing assistant or otherwise as the holder of a certificate under this Part unless such person is the holder of the appropriate certificate under this Part.

Idem

(2) No person shall use the title “registered nurse” or the designation “Reg.N.” or “R.N.” or other designation representing the title unless such person is the holder of a certificate as a registered nurse under this Part.

Idem

(3) No person shall use the title “registered nursing assistant” or the designation “R.N.A.” or other designation representing the title unless such person is the holder of a certificate as a registered nursing assistant under this Part.

Establish-
ment of
committees

77.—(1) The Council shall establish and appoint as herein-after provided the following committees,

- (a) Executive Committee;
- (b) Registration Committee;

- (c) Complaints Committee;
- (d) Discipline Committee,

and the appointments thereto shall include representation of both registered nurses and registered nursing assistants.

(2) The Council may establish such other committees as the ^{Other Committees} Council from time to time considers necessary.

(3) Where one or more vacancies occur in the membership ^{Vacancies} of the Council or any committee, the members remaining in office constitute the Council or committee so long as their number is not fewer than the prescribed quorum.

78.—(1) The Executive Committee shall be composed of, ^{Executive Committee}

- (a) the President, who shall be chairman of the Committee;
- (b) the Vice-President; and
- (c) three persons who are members of the Council, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

(2) The Executive Committee shall perform such functions ^{Duties} of the Council as are delegated to it by the Council, the by-laws or this Part and, subject to ratification by the Council at its next ensuing meeting, may take action upon any other matter that requires immediate attention between meetings of the Council, other than to make, amend or revoke a regulation or by-law.

(3) A majority of the members of the Executive Committee ^{Quorum} constitutes a quorum.

79.—(1) The Registration Committee shall be composed ^{Registration Committee} of nine persons who are members of the Council, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

(2) The Council shall name one member of the Registration ^{Chairman} Committee to be Chairman.

(3) A majority of the members of the Registration Com- ^{Quorum} mittee constitutes a quorum.

(4) The Registration Committee shall submit an annual ^{Reports} report of its activities to the Council and may make such other reports to the Council and Executive Committee as it considers appropriate.

Issuance of certificates

80.—(1) The Director shall issue a certificate or renewal thereof to any applicant therefor who is qualified under this Part and the regulations and has passed such examinations as the Council may set or approve, and the Director shall refer to the Registration Committee every application for a certificate or renewal thereof that he proposes to refuse or to which he considers terms, conditions or limitations should be attached.

Powers and duties of Registration Committee

(2) The Registration Committee,

- (a) shall determine the eligibility of applicants for certificates or renewals thereof and may require an applicant to take and pass such additional examinations as the Council may set or approve and pay such fees therefor as the Registration Committee fixes or to take such additional training as the Registration Committee specifies; and
- (b) may exempt an applicant from any requirement for certification.

Conditions of certificates

(3) The Registration Committee may direct the Director to issue or refuse to issue certificates and renewals or to issue certificates and renewals subject to such terms, conditions and limitations as the Committee specifies.

Refusal to renew

(4) For the purposes of Part I, a refusal to renew a certificate shall be deemed to be a refusal to grant the certificate.

Review of qualifications

(5) The Registration Committee may review the qualifications of any member and may impose a further term, condition or limitation on his certificate pending the demonstration of such standard of competence through the completion of such experience, courses of study or continuing education as the Committee specifies.

Registers

(6) The Director shall maintain one or more registers in which is entered every person to whom a certificate has been issued identifying the terms, conditions and limitations attached to the certificate or the registration and every revocation, suspension, cancellation and expiration or other termination and every renewal of the certificate and such other information as the Registration Committee or Discipline Committee directs.

Continuance of registration under R.S.O. 1970, c. 301

(7) Every person who was registered as a registered nurse or a registered nursing assistant under *The Nurses Act* being chapter 301 of the Revised Statutes of Ontario, 1970, immediately before this Part comes into force shall be deemed to be the holder of a certificate under this Part until it expires or is revoked, suspended or cancelled under this Part.

Complaints Committee

81.—(1) The Complaints Committee shall be composed of five persons who are members of the Council, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

(2) No person who is a member of the Discipline Committee shall be a member of the Complaints Committee. Membership in other Committees

(3) The Council shall name one member of the Complaints Committee to be its Chairman.

(4) Three members of the Complaints Committee constitute Quorum a quorum.

82.—(1) The Complaints Committee shall consider and Duties investigate complaints made by members of the public or members of the College regarding the conduct or actions of any member of the College, but no action shall be taken by the Committee under subsection 2 unless,

- (a) a written complaint has been filed with the Director and the member whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations he may wish to make concerning the matter; and
- (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

(2) The Committee in accordance with the information it Idem receives may,

- (a) direct that the matter be referred, in whole or in part, to the Discipline Committee or to the Executive Committee for the purposes of section 85; or
- (b) direct that the matter not be referred under clause *a*; or
- (c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Part or the regulations or by-laws.

(3) The Committee shall give its decision in writing to the Director for the purposes of section 8 and, where the decision is made under clause *b* of subsection 2, its reasons therefor. Decision and reasons

83.—(1) The Discipline Committee shall be composed of Committee ten persons who are members of the Council, of whom two shall be persons appointed to the Council by the Lieutenant Governor in Council. Discipline Committee

(2) Five or more members of the Discipline Committee, Quorum and votes of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum, and all disciplinary decisions require the vote of a majority of the members of the Discipline Committee present at the meeting.

Disability of lay member	(3) Where the Discipline Committee commences a hearing and the member thereof who is appointed to the Council by the Lieutenant Governor in Council becomes unable to continue to act, the remaining members may complete the hearing notwithstanding his absence.
Chairman	(4) The Council shall name one member of the Discipline Committee to be its chairman.
Reference by Council or Executive Committee	(5) Notwithstanding section 82, the Council or the Executive Committee may direct the Discipline Committee to hold a hearing and determine any specified allegation of professional misconduct or incompetence on the part of a member.
Duties of Discipline Committee	<p>84.—(1) The Discipline Committee shall,</p> <ul style="list-style-type: none"> (a) when so directed by the Council, Executive Committee or Complaints Committee, hear and determine allegations of professional misconduct or incompetence against any member; (b) hear and determine matters referred to it under section 82, 83 or 86; and (c) perform such other duties as are assigned to it by the Council.
Idem	<p>(2) In the case of hearings into allegations of professional misconduct or incompetence, the Discipline Committee shall,</p> <ul style="list-style-type: none"> (a) consider the allegations, hear the evidence and ascertain the facts of the case; (b) determine whether upon the evidence and the facts so ascertained the allegations have been proved; (c) determine whether in respect of the allegations so proved the member is guilty of professional misconduct or incompetence; (d) determine the penalty to be imposed as hereinafter provided in cases in which it finds the member guilty of professional misconduct or of incompetence.
Professional misconduct	<p>(3) A member may be found guilty of professional misconduct by the Committee if,</p> <ul style="list-style-type: none"> (a) he has been found guilty of an offence relevant to his suitability to practise, upon proof of such conviction; (b) he is in contravention of subsection 1 of section 76; or (c) he has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.
Incompetence	(4) The Discipline Committee may find a member to be incompetent if in its opinion he has displayed in his profes-

sional care of a patient a lack of knowledge, skill or judgment or disregard for the welfare of the patient of a nature or to an extent that demonstrates he is unfit to continue in practice.

(5) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence it may by order, ^{Powers of Discipline Committee}

- (a) revoke the certificate of the member;
- (b) suspend the certificate of the member for a stated period;
- (c) impose such restrictions on the certificate of the member for such a period and subject to such conditions as the Committee designates;
- (d) reprimand the member, and if deemed warranted, direct that the fact of such reprimand be recorded on the register;
- (e) impose such fine as the Committee considers appropriate to a maximum of \$5,000 to be paid by the member to the Treasurer of Ontario for payment into the Consolidated Revenue Fund;
- (f) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates,

or any combination thereof.

(6) Where the Discipline Committee is of the opinion that ^{Costs} the commencement of the proceedings was unwarranted, the Committee may order that the College reimburse the member for his costs or such portion thereof as the Discipline Committee fixes.

(7) Where a certificate is suspended or restricted for a period under subsection 5, the suspension or restriction applies ^{Expiration of suspended or restricted certificate} in respect of any renewal or right to renewal of the certificate for the duration of the period.

(8) Where the Discipline Committee revokes, suspends or restricts a certificate on the grounds of incompetence, the ^{Stay on appeal for incompetence} decision takes effect immediately notwithstanding that an appeal is taken from the decision.

(9) Where the Discipline Committee revokes, suspends or restricts the certificate of a member on grounds other than ^{Stay on appeal for professional misconduct} for incompetence, the order shall not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned.

(10) Where the Discipline Committee finds a member guilty ^{Service of decision of Discipline Committee} of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the member.

Continuation
on expiry of
Committee
membership

(11) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his term of office had not expired or been terminated.

Interpre-
tation

85.—(1) In this section,

- (a) “board of inquiry” means a board of inquiry appointed by the Executive Committee under subsection 2;
- (b) “incapacitated member” means a member suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member that he no longer be permitted to practise or that his practice be restricted.

Reference
to board of
inquiry

(2) Where the Director receives information leading him to believe that a member may be an incapacitated member, he shall make such inquiry as he considers appropriate and report to the Executive Committee who may, upon notice to the member, appoint a board of inquiry composed of at least two members of the College and one member of the Council appointed thereto by the Lieutenant Governor in Council who shall inquire into the matter.

Examination

(3) The board of inquiry shall make such inquiries as it considers appropriate and may require the member to submit to physical or mental examination by such qualified person as the board designates and if the member refuses or fails to submit to such examination the board may order that his certificate be suspended until he complies.

Hearing by
Registration
Committee

(4) The board of inquiry shall report its findings to the Executive Committee and deliver a copy thereof and a copy of any medical report obtained under subsection 3 to the member about whom the report is made and if, in the opinion of the Executive Committee, the evidence so warrants, the Executive Committee shall refer the matter to the Registration Committee to hold a hearing and may suspend the member's certificate until the determination of the question of his capacity becomes final.

Parties

(5) The board of inquiry, the person whose capacity is being investigated and any other person specified by the Registration Committee are parties to the hearing.

Medical
evidence

(6) A legally qualified medical practitioner is not compellable to produce at the hearing his case histories, notes or any other records constituting medical evidence but,

when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment and such report shall be signed by him and served upon the other parties to the proceedings,

- (a) where the evidence is required by the College, at least five days before the hearing commences; and
- (b) where the evidence is required by the person about whom the report is made, at least five days before its introduction as evidence,

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

(7) The Registration Committee shall, after the hearing,

- (a) make a finding as to whether or not the member is an incapacitated member; and
- (b) where the member is found to be an incapacitated member, by order,
 - (i) revoke his certificate,
 - (ii) suspend his certificate for such period as the Committee considers appropriate, or
 - (iii) attach such terms and conditions to the certificate as the Committee considers appropriate.

(8) The provisions of Part I and this Part applying to procedures proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration and appeals therefrom apply, *mutatis mutandis*, to proceedings of the Registration Committee under this section, except that the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

86.—(1) A person whose certificate has been revoked or suspended for cause under this Part, or registration has been suspended or cancelled for cause under a predecessor of this Part, may apply in writing to the Director for the issuance of a certificate or removal of the suspension, but such application shall not be made sooner than one year after the revocation or cancellation, or where the suspension is for more than one year, one year after the suspension.

(2) The Director shall refer the application to the Discipline Committee, or where the revocation or suspension was on the grounds of incapacity, to the Registration Committee, which

Powers of
Registration
Committee

Restoration of
registration or
certificate

Reference to
Discipline
Committee

shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Council and to the former member.

Procedures

(3) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration, except subsection 9 of section 11, apply, *mutatis mutandis*, to proceedings of the Registration Committee and Discipline Committee under this section.

Duties of employers of registered nurses

87. Every person, other than a patient, who employs a person as a registered nurse or registered nursing assistant and every agency or registry that procures employment for a person as a registered nurse or registered nursing assistant,

- (a) shall ensure that such person is the holder of an appropriate certificate under this Part; and
- (b) shall report to the College any termination of such employment for reasons purporting to constitute professional misconduct, incompetence or incapacity.

Restraining orders

88.—(1) Where it appears to the College that any person does not comply with any provision of this Part or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the College may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

Appeal

(2) An appeal lies to the Supreme Court from an order made under subsection 1.

Penalties

89.—(1) Every person who is in contravention of section 76 is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$2,000 and for each subsequent offence to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both.

Idem

(2) Every person who is in contravention of section 87 is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$1,000 and for each subsequent offence to a fine of not more than \$2,000.

Repeals

90.—(1) *The Nurses Act*, being chapter 301 of the Revised Statutes of Ontario, 1970 and *The Nurses Amendment Act, 1973*, being chapter 30, are repealed.

References

(2) Any reference in any Act or regulation to *The Nurses Act* shall be deemed to be a reference to this Part.

PART V

OPTOMETRY

91.—(1) In this Part,Interpre-
tion

- (a) "by-laws" means the by-laws made under this Part;
- (b) "College" means the College of Optometrists of Ontario;
- (c) "Council" means the Council of the College;
- (d) "licence" means a licence for the practice of optometry issued under this Part;
- (e) "member" means a member of the College;
- (f) "practice of optometry" means the services usually performed by an optometrist, including the measurement and assessment of vision, other than by the use of drugs, except such drugs for such purposes as are prescribed by the regulations, the prescribing and dispensing of ophthalmic appliances, and prescribing and providing orthoptics for the relief or correction of any visual or muscular error or defect of the eye;
- (g) "Registrar" means the Registrar of the College;
- (h) "regulations" means the regulations made under this Part.

(2) The practice of optometry is a health discipline to which ^{Health discipline} this Part applies.

92.—(1) The College of Optometrists of Ontario is continued as a body corporate without share capital with power to acquire, hold and dispose of real and personal property for the purposes of this Part.

College of
Optometrists
of Ontario
continued

(2) The objects of the College are,

Objects

- (a) to regulate the practice of optometry and to govern its members in accordance with this Act, the regulations and the by-laws;
- (b) to establish, maintain and develop standards of knowledge and skill among its members;
- (c) to establish, maintain and develop standards of qualification and practice for the practice of optometry;

- (d) to establish, maintain and develop standards of professional ethics among its members;
- (e) to administer this Part and perform such other duties and exercise such other powers as are imposed or conferred on the College by or under any Act,

in order that the public interest may be served and protected.

Membership
in the
College

93.—(1) Every person licensed by the College is a member of the College subject to any term, condition or limitation to which the licence is subject.

Resignation of
membership

(2) A member may resign his membership by filing with the Registrar his resignation in writing and his licence is thereupon cancelled, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

Cancellation
for default
of fees

(3) The Registrar may cancel a licence for non-payment of any prescribed fee after giving the member at least two months notice of the default and intention to cancel, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

Council of
the College

94.—(1) The Board of Directors of the College is continued as the Council of the College which shall be the governing body and board of directors of the College and shall manage and administer its affairs.

Composition
of Council

- (2) The Council shall be composed of,
 - (a) one person who is appointed by the University of Waterloo from the faculty of the School of Optometry;
 - (b) three persons who are not members of a Council under this Act or registered or licensed under this Act or any other Act governing a health practice and are appointed by the Lieutenant Governor in Council; and
 - (c) six persons who are members and are elected by the members in the manner provided by the regulations.

Remuneration
of lay
appointees

(3) The persons appointed under clause b of subsection 2 shall be paid out of moneys appropriated therefor by the Legislature such expenses and remuneration as is determined by the Lieutenant Governor in Council.

(4) The appointment of every person appointed under subsection 2 shall be for a term not exceeding three years, and a person whose appointment expires is eligible for re-appointment. Expiration of appointment

(5) Every member who is,

Qualifications to vote

(a) resident in Ontario; and

(b) not in default of payment of the annual fee prescribed by the regulations,

is qualified to vote at an election of members of the Council.

(6) The Council shall elect annually a President and Vice-President from among its members. President and Vice-President

(7) The Council shall appoint during pleasure a Registrar, Treasurer, Secretary and such other officers and servants as may from time to time be necessary in the opinion of the Council to perform the work of the College. Registrar, Treasurer, Secretary and staff

(8) A majority of the members of the Council constitutes Quorum a quorum.

(9) The members of the Council who were elected under *The Optometry Act*, being chapter 335 of the Revised Statutes of Ontario, 1970 and were in office immediately before this Part comes into force shall continue in office and shall be deemed to be the members referred to in clause c of subsection 2 until the expiration of the term for which they were elected or until the office otherwise becomes vacant. Continuation of Council members under R.S.O. 1970, c. 335

95. In addition to his powers and duties under Part I, the Minister may, Powers of Minister

(a) review the activities of the Council;

(b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;

(c) advise the Council with respect to the implementation of this Part and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures.

96. Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations, Regulations

- (a) establishing electoral districts for the purposes of the election of members to the Council and respecting and governing the qualifications, nomination, election and term of office of the members to be elected, and controverted elections;
- (b) prescribing the conditions disqualifying elected members from sitting on the Council and governing the filling of vacancies on the Council;
- (c) respecting any matter ancillary to the provisions of this Part with regard to the issuing, suspension and revocation of licences;
- (d) prescribing classes of licences and governing the requirements and qualifications for the issuing of licences or any class thereof and prescribing the terms and conditions thereof;
- (e) providing for the maintenance and inspection of registers of persons permitted to practise;
- (f) governing standards of practice for the profession;
- (g) prescribing drugs that may be used in the practice of optometry for such purposes as are specified;
- (h) providing for the designation of life members of the College and prescribing their rights and privileges;
- (i) authorizing persons other than members to perform specified acts in the practice of optometry under the supervision or direction of a member;
- (j) prohibiting the practice of optometry where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
- (k) defining professional misconduct for the purposes of this Part;
- (l) providing for a program of continuing education of members to maintain their standard of competence and requiring members to participate in such continuing education;
- (m) providing for the establishment and operation of an appraisal committee for the purposes of examining and assessing the standard of practice in the profession and reporting thereon to the Council and examining and assessing the standards of practice, qualifications and continuing education of members and making recommendations to the Registration Committee thereon;

- (n) regulating, controlling and prohibiting the use of terms, titles or designations by members or groups or associations of members in respect of their practices;
- (o) respecting the reporting and publication of decisions in disciplinary matters;
- (p) providing for the compilation of statistical information on the supply, distribution and professional activities of members and requiring members to provide the information necessary to compile such statistics;
- (q) respecting the duties and authority of the Registrar;
- (r) requiring and providing for the inspection and examination of the office, records and equipment of members in connection with their practice;
- (s) prescribing the records that shall be kept respecting patients;
- (t) requiring the payment of annual fees by members and fees for licensing, examinations and continuing education, including penalties for late payment, and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof;
- (u) prescribing forms and providing for their use;
- (v) providing for the exemption of any member from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable.

97.—(1) The Council may pass by-laws relating to the ^{By-laws} administrative and domestic affairs of the College not inconsistent with this Act and the regulations and without limiting the generality of the foregoing,

- (a) prescribing the seal of the College;
- (b) providing for the execution of documents by the College;
- (c) respecting banking and finance;
- (d) fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;

- (e) providing procedures for the election of President and Vice-President of the College, the filling of a vacancy in those offices, and prescribing the duties of the President and Vice-President;
- (f) respecting the calling, holding and conducting of meetings of the Council and the duties of members of Council;
- (g) respecting the calling, holding and conducting of meetings of the membership of the College;
- (h) prescribing the remuneration of the members of the Council and committees other than persons appointed by the Lieutenant Governor in Council and providing for the payment of necessary expenses of the Council and committees in the conduct of their business;
- (i) providing for the appointment, composition, powers and duties of such additional or special committees as may be required;
- (j) delegating to the Executive Committee such powers and duties of the Council as are set out in the by-law, other than the power to make, amend or revoke regulations and by-laws;
- (k) providing for a code of ethics;
- (l) prescribing forms and providing for their use;
- (m) providing procedures for the making, amending and revoking of the by-laws;
- (n) respecting management of the property of the College;
- (o) respecting the application of the funds of the College and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;
- (p) providing for the entering into arrangements by the College for its members respecting indemnity for professional liability and respecting the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members and exempting members or any class thereof from all or part of any such levy;
- (q) respecting membership of the College in a national organization with similar functions, the payment of an annual assessment and provision for representatives at meetings;

- (r) providing for the appointment of inspectors for the purposes of this Part;
 - (s) respecting all of the things that are considered necessary for the attainment of the objects of the College and the efficient conduct of its affairs.
- (2) A by-law is effective when it is passed by the Council ^{Confirmation of by-laws} but expires with the close of the next annual meeting of members of the College held after its passing, unless it is confirmed by the meeting.

(3) A copy of the by-laws made under subsection 1 and ^{Distribution of by-laws} amendments thereto,

- (a) shall be forwarded to the Minister;
- (b) shall be forwarded to each member; and
- (c) shall be available for public inspection in the office of the College.

98.—(1) No person shall engage in or hold himself out as ^{Licence to practise} engaging in the practice of optometry unless he is licensed under this Part.

(2) Subsection 1 does not apply to,

^{Exceptions}

- (a) a student enrolled in the School of Optometry at the University of Waterloo who practices optometry as required by the curriculum under the supervision of a member of the faculty or a member of the College;
- (b) an applicant for a licence under this Part who practises optometry under the personal supervision of a member of the College for the purpose of completing qualifying studies or clinical experience required under this Part.

(3) For the purposes of subsection 1, proof of the performance of one act in the practice of optometry on one occasion is sufficient to establish engaging in the practice of optometry.

(4) A member or person authorized by the regulations may engage in the practice of optometry, notwithstanding that any part of such practice is included in the practice of any other health discipline.

99. No member shall use drugs in his practice, except such drugs for such purposes as are prescribed by the regulations.

Establish-
ment of
committees

100.—(1) The Council shall establish and appoint as hereinafter provided the following committees,

- (a) Executive Committee;
- (b) Registration Committee;
- (c) Complaints Committee;
- (d) Discipline Committee,

and may establish such other committees as the Council from time to time considers necessary.

Vacancies

(2) Where one or more vacancies occur in the membership of the Council or any committee, the members remaining in office constitute the Council or committee so long as their number is not fewer than the prescribed quorum.

Executive Committee

101.—(1) The Executive Committee shall be composed of three persons who are members of the Council of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

Quorum

(2) Two members of the Executive Committee constitute a quorum.

Duties

(3) The Executive Committee shall perform such functions of the Council as are delegated to it by the Council, the by-laws or this Part and, subject to ratification by the Council at its next ensuing meeting, may take action upon any other matter that requires immediate attention between meetings of the Council, other than to make, amend or revoke a regulation or by-law.

Registration Committee

102.—(1) The Registration Committee shall be composed of,

- (a) two members of the Council of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council; and
- (b) two members of the College of whom one shall be a member of the faculty of the School of Optometry of the University of Waterloo.

Chairman

(2) The Council shall name one member of the Registration Committee to be chairman.

Quorum

(3) A majority of the members of the Registration Committee constitutes a quorum.

Issuance of licences

103.—(1) The Registrar shall issue a licence to any applicant therefor who is qualified under this Part and the regula-

tions and has passed such examinations as the Council may set or approve, and the Registrar shall refer to the Registration Committee every application for a licence that he proposes to refuse or to which he considers terms, conditions or limitations should be attached.

(2) The Registration Committee,

Powers and
duties of
Registration
Committee

- (a) shall determine the eligibility of applicants for licences and may require an applicant to take and pass such additional examinations as the Council may set or approve and pay such fees therefor as the Registration Committee fixes or to take such additional training as the Registration Committee specifies; and
- (b) may exempt an applicant from any licensing requirement.

(3) The Registration Committee may direct the Registrar^{Idem} to issue or refuse to issue licences or to issue licences subject to such terms, conditions and limitations as the Committee specifies.

(4) The Registration Committee may review the qualifications of any member and may impose a term, condition or limitation on his licence pending the demonstration of such standard of competence through the completion of such experience, courses of study or continuing education as the Committee specifies.

(5) The Registrar shall maintain one or more registers in which is entered every person who is licensed to practise optometry, identifying the terms, conditions and limitations attached to the licence, and shall note on the register every revocation, suspension and cancellation of a licence and such other information as the Registration Committee or Discipline Committee directs.

(6) Every person who was registered as an optometrist under *The Optometry Act*, being chapter 335 of the Revised Statutes of Ontario, 1970, immediately before this Part comes into force shall be deemed to be the holder of a licence under this Part for the unexpired portion of the term of the registration, unless sooner revoked, suspended or cancelled under this Part.

Continuance
of registration
under R.S.O.
1970, c. 335

104.—(1) The Complaints Committee shall be composed of, Complaints Committee

- (a) three persons who are members of the College;
- (b) two persons who are members of the Council one of whom was appointed to the Council by the Lieutenant Governor in Council.

Idem	(2) No person who is a member of the Discipline Committee shall be a member of the Complaints Committee.
Chairman	(3) The Council shall name one member of the Complaints Committee to be its Chairman.
Quorum	(4) Three members of the Complaints Committee constitute a quorum.
Duties	<p>105.—(1) The Complaints Committee shall consider and investigate complaints made by members of the public or members of the College regarding the conduct or actions of any member of the College, but no action shall be taken by the Committee under subsection 2 unless,</p> <ul style="list-style-type: none"> (a) a written complaint has been filed with the Registrar and the member whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations he may wish to make concerning the matter; and (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.
Idem	<p>(2) The Committee in accordance with the information it receives may,</p> <ul style="list-style-type: none"> (a) direct that the matter be referred, in whole or in part, to the Discipline Committee or to the Executive Committee for the purposes of section 108; or (b) direct that the matter not be referred under clause <i>a</i>; or (c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Part or the regulations or by-laws.
Decision and reasons	(3) The Committee shall give its decision in writing to the Registrar for the purposes of section 8 and, where the decision is made under clause <i>b</i> of subsection 2, its reasons therefor.
Discipline Committee	<p>106.—(1) The Discipline Committee shall be composed of,</p> <ul style="list-style-type: none"> (a) three persons who are members of the College; (b) three persons who are members of the Council, two of whom were appointed to the Council by the Lieutenant Governor in Council. <p>(2) Three or more members of the Discipline Committee, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum, and</p>

all disciplinary decisions require the vote of a majority of the members of the Discipline Committee present at the meeting.

(3) Where a panel of the Discipline Committee commences a hearing and the member thereof who is appointed to the member Council by the Lieutenant Governor in Council becomes unable to continue to act, the remaining members may complete the hearing notwithstanding his absence.

(4) The Council shall name one member of the Discipline Committee to be its chairman.

(5) Notwithstanding section 105, the Council or the Executive Committee may direct the Discipline Committee to hold a hearing and determine any specified allegation of professional misconduct or incompetence on the part of a member.

107.—(1) The Discipline Committee shall,

Duties of
Discipline
Committee

- (a) when so directed by the Council, Executive Committee or Complaints Committee, hear and determine allegations of professional misconduct or incompetence against any member;
- (b) hear and determine matters referred to it under sections 105, 106 or 109; and
- (c) perform such other duties as are assigned to it by the Council.

(2) In the case of hearings into allegations of professional misconduct or incompetence, the Discipline Committee shall,

- (a) consider the allegations, hear the evidence and ascertain the facts of the case;
- (b) determine whether upon the evidence and the facts so ascertained the allegations have been proved;
- (c) determine whether in respect of the allegations so proved the member is guilty of professional misconduct or incompetence;
- (d) determine the penalty to be imposed as hereinafter provided in cases in which it finds the member guilty of professional misconduct or of incompetence.

Professional
misconduct

(3) A member may be found guilty of professional misconduct by the Committee if,

- (a) he has been found guilty of an offence relevant to his suitability to practise, upon proof of such conviction;
- (b) he is in contravention of section 99; or
- (c) he has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.

Incompetence

(4) The Discipline Committee may find a member to be incompetent if in its opinion he has displayed in his professional care of a patient a lack of knowledge, skill or judgment or disregard for the welfare of the patient of a nature or to an extent that demonstrates he is unfit to continue in practice.

Powers of
Discipline
Committee

(5) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence it may by order,

- (a) revoke the licence of the member;
- (b) suspend the licence of the member for a stated period;
- (c) impose such restrictions on the licence of the member for such a period and subject to such conditions as the Committee designates;
- (d) reprimand the member, and if deemed warranted, direct that the fact of such reprimand be recorded on the register;
- (e) impose such fine as the Committee considers appropriate to a maximum of \$5,000 to be paid by the member to the Treasurer of Ontario for payment into the Consolidated Revenue Fund;
- (f) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates,

or any combination thereof.

Costs

(6) Where the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee may order that the College reimburse the member for his costs or such portion thereof as the Discipline Committee fixes.

(7) Where the Discipline Committee revokes, suspends or ^{Stay on appeal for} restricts a licence on the grounds of incompetence, the decision ^{incompetence} takes effect immediately notwithstanding that an appeal is taken from the decision.

(8) Where the Discipline Committee revokes, suspends or ^{Stay on appeal for} restricts the licence of a member on grounds other than ^{for professional misconduct} incompetence, the order shall not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned.

(9) Where the Discipline Committee finds a member guilty ^{Service of decision of} of professional misconduct or incompetence, a copy of the ^{Discipline Committee} decision shall be served upon the person complaining in respect of the conduct or action of the member.

(10) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on ^{Continuation on expiry of membership} the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his term of office had not expired or been terminated.

108.—(1) In this section,

Interpre-
tation

(a) “board of inquiry” means a board of inquiry appointed by the Executive Committee under sub-section 2;

(b) “incapacitated member” means a member suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member that he no longer be permitted to practise or that his practice be restricted.

(2) Where the Registrar receives information leading him ^{Reference to board of inquiry} to believe that a member may be an incapacitated member, he shall make such inquiry as he considers appropriate and report to the Executive Committee who may, upon notice to the member, appoint a board of inquiry composed of at least two members of the College and one member of the Council appointed thereto by the Lieutenant Governor in Council who shall inquire into the matter.

(3) The board of inquiry shall make such inquiries as it ^{Examination} considers appropriate and may require the member to submit

to physical or mental examination by such qualified person as the board designates and if the member refuses or fails to submit to such examination the board may order that his licence be suspended until he complies.

Hearing by
Registration
Committee

(4) The board of inquiry shall report its findings to the Executive Committee and deliver a copy thereof and a copy of any medical report obtained under subsection 3 to the member about whom the report is made and if, in the opinion of the Executive Committee, the evidence so warrants, the Executive Committee shall refer the matter to the Registration Committee to hold a hearing and may suspend the member's licence until the determination of the question of his capacity becomes final.

Parties

(5) The College, the person whose capacity is being investigated and any other person specified by the Registration Committee are parties to the hearing.

Medical
evidence

(6) A legally qualified medical practitioner is not compellable to produce at the hearing his case histories, notes or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment and such report shall be signed by him and served upon the other parties to the proceedings,

(a) where the evidence is required by the College, at least five days before the hearing commences; and

(b) where the evidence is required by the person about whom the report is made, at least five days before its introduction as evidence,

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

Powers of
Registration
Committee

(7) The Registration Committee shall, after the hearing,

(a) make a finding as to whether or not the member is an incapacitated member; and

(b) where the member is found to be an incapacitated member, by order,

(i) revoke his licence,

- (ii) suspend his licence for such period as the Committee considers appropriate, or
- (iii) attach such terms and conditions to the licence as the Committee considers appropriate.

(8) The provisions of Part I and this Part applying to ^{Procedures} proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration and appeals therefrom apply, *mutatis mutandis*, to proceedings of the Registration Committee under this section, except that the decision takes effect immediately notwithstanding that an appeal is taken from the order.

109.—(1) A person whose licence has been revoked or ^{Restoration of licence} suspended for cause under this Part, or registration has been suspended or cancelled for cause under a predecessor of this Part, may apply in writing to the Registrar for the issuance of a licence or removal of the suspension, but such application shall not be made sooner than one year after the revocation or cancellation or, where the suspension is for more than one year, one year after the suspension.

(2) The Registrar shall refer the application to the Discipline ^{Reference to Committee} Committee, or where the revocation or suspension was on the grounds of incapacity to the Registration Committee, which shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Council and to the former member.

(3) The provisions of Part I and this Part applying to ^{Procedures} proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration, except subsection 9 of section 11 apply, *mutatis mutandis*, to proceedings of the Registration Committee and Discipline Committee under this section.

110.—(1) Where the Registrar believes on reasonable and ^{Investigation of members} probable grounds that a member has committed an act of professional misconduct or incompetence, the Registrar may by order appoint one or more persons to make an investigation to ascertain whether such an act has occurred, and the person appointed shall report the result of his investigation to the Registrar.

(2) For purposes relevant to the subject-matter of an ^{Powers of investigator} investigation under this section, the person appointed to make the investigation may inquire into and examine the practice of the member in respect of whom the investigation

1971, c. 49

is being made and may, upon production of his appointment, enter at any reasonable time the business premises of such person and examine books, records, documents and things relevant to the subject-matter of the investigation, and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to such inquiry as if it were an inquiry under that Act.

Obstruction
of
investigator

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation.

Search
warrant

(4) Where a provincial judge is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the provincial judge may, whether or not an inspection has been made or attempted under subsection 2, issue an order authorizing the person making the investigation, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the provincial judge, by the order, authorizes the person making the investigation to make the search at night.

Removal of
books, etc.

(5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, records, documents or things examined under subsection 2 or 4 relating to the member whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, records or documents, but such copying shall be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member whose practice is being investigated.

Admissibility
of copies

(6) Any copy made as provided in subsection 5 and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, record or document and its contents.

(7) The Registrar shall report the results of the investigation ^{Report of Registrar} to the Council or the Executive Committee or to such other committee as he considers appropriate.

111.—(1) Every person employed in the administration of ^{Matters confidential} this Part, including any person making an inquiry or investigation under section 110 and any member of the Council or a Committee shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry or investigation under section 110 and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Part and the regulations and by-laws or any proceedings under this Part or the regulations;
- (b) as may be required for the enforcement of *The Health Insurance Act, 1972*;^{1972, c. 91}
- (c) to his counsel; or
- (d) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required ^{Testimony in civil suit} to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry or investigation except in a proceeding under this Part or the regulations or by-laws.

112.—(1) Where it appears to the College that any person ^{Restraining orders} does not comply with any provision of this Part or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the College may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

(2) An appeal lies to the Supreme Court from an order made ^{Appeal} under subsection 1.

113.—(1) Nothing in this Part applies to the practice of ^{Exemption under} ophthalmic dispensing by an ophthalmic dispenser registered ^{c. 334} ^{R.S.O. 1970.} under *The Ophthalmic Dispensers Act*.

Retail
merchants

- (2) Nothing in this Part prevents,
- (a) the sale of protective glasses for industrial purposes, coloured glasses not embodying any ophthalmic lens, goggles or simple magnifying glasses not sold or divided for the relief or correction of any visual or muscular error or defect of the eye; or
 - (b) the sale or offering for sale by a retail merchant at his place of business of spectacles or eyeglasses,

but the Lieutenant Governor in Council may make regulations governing or restricting the sale or offering for sale referred to in clause b and prescribing the terms and conditions thereof and designating the nature and kind of spectacles and eyeglasses that may be sold under this subsection.

Penalties

114.—(1) Every person who is in contravention of section 98 is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$2,000 and for each subsequent offence to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both.

Idem

(2) Every person who, not being a member, uses an occupational designation prescribed by the regulations to be used by members or a like designation is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$1,000 and for each subsequent offence to a fine of not more than \$2,000.

Idem

(3) Any person who obstructs a person appointed to make an investigation under section 110 in the course of his duties is guilty of an offence and on summary conviction is liable to a fine not exceeding \$2,000.

Act,
repealed

115.—(1) *The Optometry Act*, being chapter 335 of the Revised Statutes of Ontario, 1970, is repealed.

References

(2) Any reference in any Act to an optometrist registered under *The Optometry Act* shall be deemed to be a reference to an optometrist licensed under this Part and any reference to *The Optometry Act* shall be deemed to be a reference to this Part.

PART VI

PHARMACY

116.—(1) In this Part,

Interpre-
tation

(a) “by-laws” means the by-laws made under this Part;

(b) “College” means the Ontario College of Pharmacists;

(c) “Council” means the Council of the College;

(d) “drug” means any substance or preparation containing any substance,

(i) manufactured, sold or represented for use in,

1. the diagnosis, treatment, mitigation or prevention of a disease, disorder, abnormal physical or mental state or the symptoms thereof, in humans, animals or fowl, or

2. restoring, correcting, or modifying functions in humans, animals or fowl,

(ii) referred to in Schedule C, D, E, F, G or N, or

(iii) listed in a publication named by the regulations,

(iv) named in the regulations,

but does not include,

(v) any substance or preparation referred to in sub-clause i, ii or iii manufactured, offered for sale or sold as, or as part of, a food, drink or cosmetic,

(vi) any medicine registered under the *Proprietary or Patent Medicine Act* (Canada) and sold in accordance with its provisions, or

(vii) a substance or preparation named in Schedule A or B;

(e) “interchangeable pharmaceutical product” means a product containing a drug or drugs in the same

R.S.C. 1970,
c. P-25

amounts of the same active ingredients in the same dosage form as that directed by a prescription;

- (f) "intern" means a person who is registered under this Part as an intern;
- (g) "licence" means a licence to act as a pharmacist issued under this Part;
- (h) "member" means a member of the College;
- (i) "Parcost C.D.I." means the Parcost Comparative Drug Index prescribed by the regulations;
- (j) "pharmacist" means a person who is licensed under this Part as a pharmacist;
- (k) "pharmacy" means a premises in or in part of which prescriptions are compounded and dispensed for the public or drugs are sold by retail;
- (l) "prescriber" means a person who is authorized to give a prescription within the scope of his practice of a health discipline or profession;
- (m) "prescription" means a direction from a prescriber directing the dispensing of any drug or mixture of drugs for a designated person or animal;
- (n) "register" means a register maintained by the Registrar under this Part;
- (o) "registered pharmacy student" means a person who is registered under this Part as a pharmacy student;
- (p) "Registrar" means the Registrar of the College;
- (q) "registration" means a registration as an intern or registered pharmacy student and "registered" has a corresponding meaning;
- (r) "regulations" mean the regulations made under this Part.

(2) A reference in this Part to Schedules A, B, C, D, E, F, G or N is a reference to such Schedule established by the regulations for the purposes of this Part.

(3) The practice of a pharmacist is a health discipline to which this Part applies.

117.—(1) This Part does not apply to,

Application
of Part

(a) drugs compounded, dispensed or supplied in and by a hospital or a health or custodial institution approved or licensed under any general or special Act under the authority of a prescriber for persons under health care provided by such hospital or health or custodial institution;

(b) the selling of,

(i) any substance registered under the Pest Control Products Act (Canada) and sold in accordance with its provisions,

(ii) any feeding stuffs registered under the Feeds Act (Canada) and sold in accordance with its provisions,

(iii) a drug by a person licensed under The Live Stock Medicines Act, 1973;

(c) the practice of a veterinarian under The Veterinarians Act.

(2) Nothing in this Part prevents any person from selling or dispensing a drug to a person authorized under this Act to dispense, prescribe or administer drugs.

THE ONTARIO COLLEGE OF PHARMACISTS

118.—(1) The Ontario College of Pharmacy is continued as the Ontario College of Pharmacists, being a body corporate without share capital with power to acquire, hold and dispose of real and personal property for the purposes of this Part.

(2) The objects of the College are,

Objects

(a) to regulate the practice of pharmacists and to govern its members in accordance with this Act, the regulations and the by-laws;

- (b) to establish, maintain and develop standards of knowledge and skill among its members;
- (c) to establish, maintain and develop standards of qualification and practice for the practice of pharmacists;
- (d) to establish, maintain and develop standards of professional ethics among its members;
- (e) to establish, maintain and develop standards for the operation of pharmacies;
- (f) to administer this Part and perform such other duties and exercise such other powers as are imposed or conferred on the college by or under any Act,

in order that the public interest may be served and protected.

**Membership
in the
College**

119.—(1) Every person licensed by the College is a member of the College subject to any term, condition or limitation to which the licence is subject.

**Resignation
of
membership**

(2) A member may resign his membership by filing with the Registrar his resignation in writing and his licence is thereupon cancelled subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

**Cancellation
for default
of fees**

(3) The Council may cancel a licence for non-payment of any prescribed fee after the member has been given at least two months notice of the default and intention to cancel, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

**Council
of the
College**

120.—(1) The Council of the Ontario College of Pharmacy is continued and shall be the governing body and board of directors of the Ontario College of Pharmacists and shall manage and administer its affairs.

**Composition
of Council**

(2) The Council shall be composed of,

- (a) not fewer than thirteen and not more than nineteen persons who are members and are elected by the members in the manner provided by the regulations;
- (b) not fewer than four and not more than six persons who are not members of a Council under this Act or registered or licensed under this or any other Act governing a health practice, and who are appointed by the Lieutenant Governor in Council; and

(c) the dean of each faculty of pharmacy in Ontario or, in his absence, a representative who is a member of the faculty and of the College appointed by the dean.

(3) The persons appointed under clause *b* of subsection 2 shall be paid out of moneys appropriated therefor by the Legislature such expenses and remuneration as is determined by the Lieutenant Governor in Council. ^{Remuneration of lay members}

(4) The appointment of every person appointed under subsection 2 expires at the first regular meeting of the Council following the election of members to Council held next after the effective date of his appointment, and a person whose appointment expires is eligible for reappointment. ^{Expiration of appointment}

(5) Every member who is,

^{Qualifications to vote}

(a) resident in Ontario; and

(b) not in default of payment of the annual fee prescribed by the regulations,

is qualified to vote at an election of members of the Council.

(6) The Council shall elect a President and Vice-President ^{President, Vice-President} from among its members.

(7) The Council shall appoint during pleasure a Registrar ^{Registrar and staff} and may appoint a deputy registrar who shall have the powers of the Registrar for the purposes of this Part, and may appoint such other persons as are from time to time necessary or desirable in the opinion of the Council to perform the work of the College.

(8) A majority of the members of the Council constitutes a quorum. ^{Quorum}

(9) The Council shall meet at least twice a year.

^{Meetings of Council}

(10) The members of the Council of the Ontario College of Pharmacy who were elected under *The Pharmacy Act*, being members of the Council under chapter 348 of the Revised Statutes of Ontario, 1970 and R.S.O. 1970, c. 348, were in office immediately before this Part comes into force shall continue in office and shall be deemed to be the members referred to in clause *a* of subsection 2 until the expiration of the term for which they were elected or until the office otherwise becomes vacant. ^{Continuation of Council members under R.S.O. 1970, c. 348}

Powers of
Minister

121. In addition to his powers and duties under Part 1, the Minister may,

- (a) review the activities of the Council;
- (b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;
- (c) advise the Council with respect to the implementation of this Part and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures.

Regulations

122.—(1) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations,

- (a) fixing the number of members to be elected to the Council and establishing the regional and other representation for elections;
- (b) respecting and governing the qualifications, nomination, election and term of office of the members to be elected to the Council, and controverted elections;
- (c) prescribing the conditions disqualifying elected members from sitting on the Council and governing the filling of vacancies on the Council;
- (d) respecting any matter ancillary to the provisions of this Part with regard to the issuing, suspension and revocation of licences and registrations;
- (e) prescribing classes of licences and governing the requirements and qualifications for the issuing of licences or any class thereof and prescribing the terms and conditions thereof;
- (f) prescribing the qualifications for and conditions of registration of students and interns and governing in-service training for students and interns;
- (g) providing for the maintenance and inspection of registers;
- (h) governing standards of practice for the profession;
- (i) respecting the advertising of professional services;
- (j) prescribing the books and records to be kept, returns to be made and information to be furnished with respect to pharmacies and the practice of pharmacists and providing for the examination and audit of such books and records, as the regulations prescribe;

- (k) regulating advertising by members;
- (l) providing for the designation of honorary members of the College and prescribing their rights and privileges;
- (m) prohibiting practice by pharmacists where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
- (n) defining professional misconduct for the purposes of this Part;
- (o) providing for a program of continuing education of members to maintain their standard of competence and requiring members to participate in such continuing education;
- (p) regulating, controlling and prohibiting the use of terms, titles or designations by members or groups or associations of members in respect of their practices;
- (q) respecting the reporting and publication of decisions in disciplinary matters;
- (r) providing for the compilation of statistical information on the supply, distribution and professional activities of members and requiring members to provide the information necessary to compile such statistics;
- (s) respecting the duties and authority of the Registrar;
- (t) requiring the payment of annual fees by members, students and interns and fees for licensing, registration, examinations and continuing education, including penalties for late payment, and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof;
- (u) prescribing forms and providing for their use;
- (v) providing for the exemption of any member from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable.

(2) The number of members to be elected to the Council and the electoral divisions and other representation fixed and established under clause *a* of subsection 1 shall not be altered or amended more than once in any five year period.

By-laws

123.—(1) The Council may pass by-laws relating to the administrative and domestic affairs of the College not inconsistent with this Act and the regulations and without limiting the generality of the foregoing,

- (a) prescribing the seal of the College;
- (b) providing for the execution of documents by the College;
- (c) respecting banking and finance;
- (d) fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;
- (e) providing procedures for the election of President and Vice-President of the College, the filling of a vacancy in those offices, and prescribing the duties of the President and Vice-President;
- (f) respecting the calling, holding and conducting of meetings of the Council and the duties of members of Council;
- (g) respecting the calling, holding and conducting of meetings of the membership of the College;
- (h) prescribing the remuneration of the members of the Council and committees other than persons appointed by the Lieutenant Governor in Council and providing for the payment of necessary expenses of the Council and committees in the conduct of their business;
- (i) providing for the appointment, composition, powers and duties of such additional or special committees as may be required;
- (j) delegating to the Executive Committee such powers and duties of the Council as are set out in the by-law, other than the power to make, amend or revoke regulations and by-laws;
- (k) providing for a code of ethics;
- (l) providing for the appointment of inspectors for the purposes of this Part;
- (m) prescribing forms and providing for their use;

- (n) providing procedures for the making, amending and revoking of the by-laws;
- (o) respecting management of the property of the College;
- (p) respecting the application of the funds of the College and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;
- (q) providing for the entering into arrangements by the College for its members respecting indemnity for professional liability and respecting the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members and exempting members or any class thereof from all or part of any such levy;
- (r) respecting membership of the College in a national organization with similar functions, the payment of an annual assessment and provision for representatives at meetings;
- (s) authorizing the making of grants for any purpose that may tend to advance scientific knowledge or pharmacy education, or maintain or improve the standards of practice in pharmacy or to support and encourage public information and interest in the past and present role of pharmacy in society;
- (t) respecting all of the things that are considered necessary for the attainment of the objects of the College and the efficient conduct of its affairs.

(2) A copy of the by-laws made under subsection 1 and ^{Distribution of by-laws} amendments thereto,

- (a) shall be forwarded to the Minister;
- (b) shall be forwarded to each member; and
- (c) shall be available for public inspection in the office of the College.

124.—(1) Except as provided in this Part, no person shall ^{Licence to act as} act or hold himself out as acting as a pharmacist unless he ^{pharmacist} is licensed under this Part.

Use of titles

(2) Any person who, in making or purporting to make a retail sale of a drug or substance in Schedule A or B, uses or associates therewith the title or designation of,

- (a) pharmacist;
- (b) pharmaceutical chemist;
- (c) chemist;
- (d) druggist;
- (e) apothecary,

whether or not in combination with each other or with any other term shall be deemed to be holding himself out as acting as a pharmacist for the purposes of subsection 1.

Conflict with other health discipline

(3) A licence shall be deemed to authorize a member to act as a pharmacist under this Part, notwithstanding that such action is included in the practice of any other health discipline.

Establishment of committees

125.—(1) The Council shall establish and appoint as hereinafter provided the following committees,

- (a) Executive Committee;
- (b) Accreditation Committee;
- (c) Registration Committee;
- (d) Complaints Committee;
- (e) Discipline Committee,

and may establish such other committees as the Council from time to time considers necessary.

Vacancies

(2) Where one or more vacancies occur in the membership of the Council or any committee, the members remaining in office constitute the Council or committee so long as their number is not fewer than the prescribed quorum.

Completing quorum

(3) Where the persons attending a meeting of any Committee duly called fail to constitute a quorum, the President may appoint such members of the Council as are required to complete the quorum to attend the meeting and act as a member of the Committee for the purposes of the meeting.

126.—(1) The Executive Committee shall be composed of, ^{Executive Committee}

(a) the President, who shall be Chairman of the Committee;

(b) the Vice-President; and

(c) three members of the Council appointed by the Council, one of whom shall be the immediate past president, if he is a member of Council, and one of whom shall be a person appointed to the Council by the Lieutenant Governor in Council.

(2) A majority of the members of the Executive Committee ^{Quorum} constitutes a quorum.

(3) The Executive Committee shall perform such functions ^{Duties} of the Council as are delegated to it by the Council, the by-laws or this Part and, subject to ratification by the Council at its next ensuing meeting, may take action upon any other matter that requires immediate attention between meetings of the Council, other than to make, amend or revoke a regulation or by-law.

127.—(1) The Registration Committee shall be composed ^{Registration Committee} of,

(a) one member of the Council who is the dean of a faculty of pharmacy, or his representative on the Council;

(b) two members of the Council who were elected to the Council; and

(c) one member of the Council who was appointed to the Council by the Lieutenant Governor in Council.

(2) The Council shall name one member of the Registration ^{Chairman} Committee to be Chairman.

(3) A majority of the members of the Registration Com- ^{Quorum} mittee constitutes a quorum.

128.—(1) The Registrar shall issue a licence or registration ^{Licences and registrations} to any applicant therefor who is qualified under this Part and has passed such examinations as the Council may set or approve, and the Registrar shall refer to the Registration Committee every application for a licence or registration that he proposes to refuse or to which he considers terms, conditions or limitations should be attached.

Powers and
duties of
Registration
Committee

(2) The Registration Committee,

- (a) shall determine the eligibility of applicants for licences and registrations and may require an applicant to take and pass such additional examinations as the Council may set or approve and pay such fees therefor as the Registration Committee fixes or to take such additional training as the Registration Committee specifies; and
- (b) may exempt an applicant from any admission requirement.

Conditions
of licences

(3) The Registration committee may direct the Registrar to issue or refuse to issue licences or make or refuse to make registrations or to issue licences and make registrations subject to such terms, conditions and limitations as the Committee specifies.

Review of
qualifications

(4) The Registration Committee may review the qualifications of any member and may impose a further term, condition or limitation on his licence pending the demonstration of such standard of competence through the completion of such experience, courses of study or continuing education as the Committee specifies.

Registers of
licences

(5) The Registrar shall maintain one or more registers in which is entered every person who is licensed or registered under this Part, identifying the terms, conditions and limitations attached to the licence or registration, and shall note on the register every revocation, suspension and cancellation or termination of a licence or registration and such other information as the Registration Committee or Discipline Committee directs.

Continuation
of licences
R.S.O. 1970,
c. 348

(6) Every licence and registration issued or made under *The Pharmacy Act*, being chapter 348 of the Revised Statutes of Ontario, 1970, and in effect immediately before this Part comes into force continues in the same manner as if issued or made under this Part.

Accredita-
tion
Committee

129.—(1) The Accreditation Committee shall be composed of,

- (a) three members of the Council who were elected to the Council; and
- (b) one member of the Council who was appointed to the Council by the Lieutenant Governor in Council,

and shall exercise the powers and carry out the duties assigned to it under sections 138 and 139.

(2) No person who is a member of the Discipline Committee ^{Idem} shall be a member of the Accreditation Committee.

(3) The Council shall name one member of the Accreditation Committee to be Chairman ^{Chairman}.

(4) A majority of the members of the Accreditation Committee constitutes a quorum ^{Quorum}.

130.—(1) The Complaints Committee shall be composed ^{Complaints Committee} of,

(a) three members of the Council who were elected to the Council; and

(b) one member of the Council who was appointed to the Council by the Lieutenant Governor in Council.

(2) No person who is a member of the Discipline Committee ^{Idem} shall be a member of the Complaints Committee.

(3) The Council shall name one member of the Complaints Committee to be its Chairman ^{Chairman}.

(4) A majority of the members of the Complaints Committee constitutes a quorum ^{Quorum}.

131.—(1) The Complaints Committee shall consider and investigate complaints made by members of the public regarding the conduct or actions of any member of the College, but no action shall be taken by the Committee under subsection 2 unless,

(a) a written complaint has been filed with the Registrar and the member whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations he may wish to make concerning the matter; and

(b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

(2) The Committee in accordance with the information it ^{Idem} receives may,

(a) direct that the matter be referred, in whole or in part, to the Discipline Committee or to the Executive Committee for the purposes of section 134; or

- (b) direct that the matter not be referred under clause *a*; or
- (c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Part or the regulations or by-laws.

**Decision
and
reasons**

- (3) The Committee shall give its decision in writing to the Registrar for the purposes of section 8 and, where the decision is made under clause *b* of subsection 2, its reasons therefor.

**Discipline
Committee**

132.—(1) The Discipline Committee shall be composed of,

- (a) four members of the Council who were elected to the Council; and
- (b) one member of the Council who was appointed to the Council by the Lieutenant Governor in Council.

**Quorum
and votes**

- (2) Three or more members of the Discipline Committee, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum, and all disciplinary decisions require the vote of a majority of the members of the Discipline Committee present at the meeting.

**Disability
of lay
member**

- (3) Where the Discipline Committee commences a hearing and the member thereof who is appointed to the Council by the Lieutenant Governor in Council becomes unable to continue to act, the remaining members may complete the hearing notwithstanding his absence.

Chairman

- (4) The Council shall name one member of the Discipline Committee to be its Chairman.

**Reference
by Council
or Executive
Committee**

- (5) Notwithstanding section 131, the Council or the Executive Committee may direct the Discipline Committee to hold a hearing and determine any specified allegation of professional misconduct or incompetence on the part of a member.

**Duties of
Discipline
Committee**

133.—(1) The Discipline Committee shall,

- (a) when so directed by the Council, Executive Committee or Complaints Committee, hear and determine allegations of professional misconduct or incompetence against any member;
- (b) hear and determine matters referred to it under section 131, 132, 135 or 139; and
- (c) perform such other duties as are assigned to it by the Council.

Idem

- (2) In the case of hearings into allegations of professional misconduct or incompetence, the Discipline Committee shall,

- (a) consider the allegations, hear the evidence and ascertain the facts of the case;
- (b) determine whether upon the evidence and the facts so ascertained the allegations have been proved;
- (c) determine whether in respect of the allegations so proved the member is guilty of professional misconduct or incompetence;
- (d) determine the penalty to be imposed as hereinafter provided in cases in which it finds the member guilty of professional misconduct or of incompetence.

(3) A member may be found guilty of professional misconduct if,

- (a) he has been found guilty of an offence relevant to his suitability to practise, upon proof of such conviction;
- (b) he has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.

(4) The Discipline Committee may find a member to be incompetent if in its opinion he has displayed in his professional responsibilities a lack of knowledge, skill or judgment or disregard for the welfare of the public he serves of a nature or to an extent that demonstrates he is unfit to carry out the responsibilities of a pharmacist.

(5) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence it may by order, Powers of Discipline Committee

- (a) revoke the licence of the member;
- (b) suspend the licence of the member for a stated period not exceeding twelve months;
- (c) impose such restrictions on the licence of the member for such a period and subject to such conditions as the Committee designates;
- (d) reprimand the member, and if deemed warranted, direct that the fact of such reprimand be recorded on the register;
- (e) impose such fine as the Committee considers appropriate to a maximum of \$5,000 to be paid by the member to the Treasurer of Ontario for payment into the Consolidated Revenue Fund;

Costs

(f) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates,

or any combination thereof.

Stay on appeal for incompetence

(6) Where the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee may order that the College reimburse the member for his costs or such portion thereof as the Discipline Committee fixes.

(7) Where the Discipline Committee revokes, suspends or restricts a licence on the grounds of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

Stay on appeal for professional misconduct

(8) Where the Discipline Committee revokes, suspends or restricts the licence of a member on grounds other than for incompetence, the order shall not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned.

Service of decision of Discipline Committee

(9) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the member.

Continuation on expiry of Committee membership

(10) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his term of office had not expired or been terminated.

Interpretation

134.—(1) In this section,

(a) "board of inquiry" means a board of inquiry appointed by the Executive Committee under subsection 2;

(b) "incapacitated member" means a member suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member that he no longer be permitted to practise as a pharmacist or that his practice be restricted.

Reference to board of inquiry

(2) Where the Registrar receives information leading him to believe that a member may be an incapacitated member, he shall make such inquiry as he considers appropriate and

report to the Executive Committee who may, upon notice to the member, appoint a board of inquiry composed of at least two members of the College and one member of the Council appointed thereto by the Lieutenant Governor in Council who shall inquire into the matter.

(3) The board of inquiry shall make such inquiries as it ^{Examination} considers appropriate and may require the member to submit to physical or mental examination by such qualified person as the board designates and if the member refuses or fails to submit to such examination the Executive Committee on the recommendation of the Board may order that his licence be suspended until he complies.

(4) The board of inquiry shall report its findings to the ^{Hearing by Registration Committee} Executive Committee and deliver a copy thereof and a copy of any medical report obtained under subsection 3 to the member about whom the report is made and if, in the opinion of the Executive Committee, the evidence so warrants, the Executive Committee shall refer the matter to the Registration Committee to hold a hearing and the Executive Committee may, on the recommendation of the Registration Committee, suspend the member's licence until the determination of the question of his capacity becomes final.

(5) The College, the person whose capacity is being investigated ^{Parties} and any other person specified by the Committee are parties to the hearing.

(6) A legally qualified medical practitioner is not com- ^{Medical evidence} pellable to produce at the hearing his case histories, notes or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment and such report shall be signed by him and served upon the other parties to the proceedings,

- (a) where the evidence is required by the College, at least five days before the hearing commences; and
- (b) where the evidence is required by the person about whom the report is made, at least five days before its introduction as evidence,

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

Powers of
Registration
Committee

(7) The Registration Committee shall, after the hearing,

- (a) make a finding as to whether or not the member is an incapacitated member; and
- (b) where the member is found to be an incapacitated member, by order,
 - (i) revoke his licence,
 - (ii) suspend his licence for such period as the Committee considers appropriate, or
 - (iii) attach such terms and conditions to the licence as the Committee considers appropriate.

Notice
of orders

(8) The Registrar may give notice of an order made under this section to such persons as he considers appropriate in the public interest.

Procedures

(9) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration and appeals therefrom apply, *mutatis mutandis*, to proceedings of the Registration Committee under this section, except that the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

Restoration
of licence

135.—(1) A person whose licence has been revoked for cause under this Part, or registration has been suspended or cancelled for cause under a predecessor of this Part, may apply in writing to the Registrar for the issuance of a licence or removal of the suspension, but such application shall not be made sooner than one year after the revocation or cancellation or, where the suspension is for more than one year, one year after the suspension.

Reference
to
Discipline
Committee

(2) The Registrar shall refer the application to the Discipline Committee, or where the revocation or suspension was on the grounds of incapacity, to the Registration Committee, which shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Council and to the former member.

Procedures

(3) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration, except subsection 9 of section 11 apply, *mutatis mutandis*, to proceedings

of the Registration Committee and Discipline Committee under this section.

(4) Notwithstanding subsections 1, 2 and 3, the Council or the Executive Committee may direct at any time that a licence be issued to a person whose licence has previously been revoked for cause or a suspension for cause be removed, subject to such terms, conditions or limitations as the Council or Executive Committee, as the case may be, considers appropriate.

Direction
by Council
to issue
licence

136.—(1) Where the Registrar believes on reasonable and probable grounds that a member has committed an act of professional misconduct or incompetence the Registrar may by order appoint one or more persons to make an investigation to ascertain whether such act has occurred, and the person appointed shall report the result of his investigation to the Registrar.

Investiga-
tion of
members

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the practice of the member in respect of whom the investigation is being made and may upon production of his appointment enter at any reasonable time the business premises of such person and examine books, records, documents and things relevant to the subject-matter of the investigation and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to such inquiry as if it were an inquiry under that Act.

Powers of
investigator

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation.

Obstruction
of
investigator

(4) Where a provincial judge is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the provincial judge may, whether or not an inspection has been made or attempted under subsection 2, issue an order authorizing the person making the investigation, together with

Search
warrant

such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the provincial judge, by the order, authorizes the person making the investigation to make the search at night.

*Removal of
books, etc.*

(5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, records, documents or things examined under subsection 2 or 4 relating to the member whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, records or documents, but such copying shall be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member whose practice is being investigated.

*Admissi-
bility of
copies*

(6) Any copy made as provided in subsection 5 and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, record or document and its contents.

*Report of
Registrar*

(7) The Registrar shall report the results of the investigation to the Council or the Executive Committee or such other Committee as he considers appropriate.

*Matters
confidential*

137.—(1) Every person employed in the administration of this Part, including any person making an inquiry or investigation under section 136, shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry or investigation and shall not communicate any such matters to any other person except,

(a) as may be required in connection with the administration of this Part and the regulations and by-laws or any proceedings under this Part or the regulations; or

(b) as may be required for the enforcement of *The Health Insurance Act, 1972*;

(c) to his counsel; or

(d) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required ^{Testimony in civil suit} to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry or investigation except in a proceeding under this Part or the regulations or by-laws.

PHARMACIES

138.—(1) No person shall establish or operate a pharmacy ^{Certification of accreditation} unless a certificate of accreditation has been issued in respect thereof.

(2) The Registrar shall issue a certificate of accreditation ^{Issuance} and renewals thereof to any applicant therefor where the applicant and the pharmacy and its proposed operation qualify under this Part and the regulations and shall refer to the Accreditation Committee every application for a certificate or renewal that he proposes to refuse or to which he considers terms, conditions or limitations should be attached.

(3) The Accreditation Committee shall determine the eligibility of the applicant and the pharmacy or proposed pharmacy and its operation and may direct the Registrar to issue or refuse to issue the accreditation certificate or to issue the accreditation certificate subject to such terms, conditions or limitations as the Committee directs. ^{Accreditation Committee}

(4) The provisions of Part I applying to hearings, review ^{Procedures} and appeals in respect of proceedings of the Registration Committee apply, *mutatis mutandis*, in respect of proceedings of the Accreditation Committee.

(5) Every certificate of accreditation issued under *The Pharmacy Act*, being chapter 348 of the Revised Statutes of Ontario, 1970, and in effect immediately before this Part comes into force continues in the same manner as if issued under this Part. ^{Continuation of certificates R.S.O. 1970, c. 348}

139.—(1) Where the Accreditation Committee has reason to believe that a pharmacy or its operation fails to conform ^{Revocation of certificate of accreditation} to the requirements of this Part and the regulations or to any term, condition or limitation to which its certificate of accreditation is subject, the Committee may refer the matter to the Discipline Committee for a hearing and determination.

(2) Where the Accreditation Committee refers a matter to the Discipline Committee and the Discipline Committee finds ^{Powers of Discipline Committee}

that a pharmacy or its operation fails to conform to the requirements of this Part and the regulations or to any term, condition or limitation to which its certificate of accreditation is subject, the Discipline Committee may,

- (a) suspend the certificate of accreditation for a stated period; or
- (b) revoke the certificate of accreditation.

Procedures

(3) The provisions of Part I and this Part applying to proceedings before the Discipline Committee in respect of professional misconduct and appeals therefrom apply to the proceedings before the Discipline Committee under this section.

**Cancellation
for non-
payment
of fee**

(4) The Council may cancel a certificate of accreditation for non-payment of the prescribed fee after the person operating the pharmacy has been given at least two months notice of default and intention to cancel.

**Closing
of pharmacy**

140. Every person who permanently closes a pharmacy shall immediately remove all signs and symbols relating to the practice of pharmacy either within or outside the premises, shall remove and dispose of all drugs according to law and shall submit in writing to the Registrar such information and within such time as the regulations prescribe.

**Operation of
pharmacies
by corpora-
tion**

141.—(1) No corporation shall own or operate a pharmacy unless the majority of the directors of the corporation are pharmacists.

Idem

(2) No corporation shall own or operate a pharmacy unless a majority of each class of shares of the corporation is owned by and registered in the name of pharmacists.

**Application
of subs. 2**

(3) For the purposes of subsection 2, shares registered in the name of the personal representative of a deceased pharmacist shall, for a period not exceeding four years, be considered to be registered in the name of a pharmacist.

Idem

(4) Subsection 2 does not apply to any corporation operating a pharmacy on the 14th day of May, 1954.

**Application
of section**

(5) This section does not apply to the operation of a pharmacy by a non-profit corporation having as its objects and providing health services by members of more than one health discipline.

**Where
licence
revoked**

142. No person whose licence as a pharmacist has been revoked for cause or while his licence is suspended for cause,

- (a) shall be employed or work in a pharmacy; or
- (b) shall act as a director or vote as a shareholder in a corporation operating a pharmacy.

143.—(1) No person other than a pharmacist or a corporation complying with the requirements of section 141 shall own pharmacies or operate a pharmacy.

(2) For the purposes of the ownership of a pharmacy, or ^{Idem} for the purposes of the composition of the board of directors or ownership of shares of a corporation as required by section 141, the right to operate the pharmacy shall not be affected by,

(a) any suspension of the licence of a pharmacist; or

(b) the revocation of the licence of a pharmacist until after a period of six months has elapsed.

144.—(1) Where a person owning and operating a pharmacy becomes bankrupt, insolvent or makes an assignment for the benefit of creditors, he shall so notify the Registrar and the trustee in bankruptcy, liquidator or assignee, as the case may be, may own and operate the pharmacy for the purposes of the bankruptcy, insolvency or assignment.

(2) Upon the death of a pharmacist who was owning and operating a pharmacy at the time of his death, the personal representative of such deceased person may own and operate the pharmacy for a period of four years or for such further period as the Council may authorize.

(3) Every person authorized to own and operate a pharmacy under subsection 1 or 2 shall immediately upon becoming so authorized file with the Registrar evidence of his authority.

145.—(1) No person shall operate a pharmacy unless,

^{Carrying on business of bankrupt person}

(a) it is under the supervision of a pharmacist who is physically present; and

(b) it is managed by a pharmacist so designated by the owner of the pharmacy.

(2) Where the drugs in a pharmacy are restricted to a part of the pharmacy that is not accessible to the public in accordance with the regulations, and while such part is not in operation, clause *a* of subsection 1 does not apply to the remaining premises of the pharmacy.

(3) Every pharmacist practising in a pharmacy shall publicly display his licence in the pharmacy except during such period, if any, as the licence is under suspension.

146. No person shall in connection with a retail business use the designation,

(a) drug store;

- (b) pharmacy;
- (c) drug department;
- (d) drug sundries;
- (e) drug or drugs;
- (f) drug mart; or
- (g) medicines,

unless the business is an accredited pharmacy.

**Inspection
of premises**

147.—(1) An inspector appointed under a by-law may enter any pharmacy or other shop in the performance of his duties under this Part at all reasonable times.

**Inspection
of records**

(2) Any record required to be kept under this Part shall be open to inspection by any inspector appointed under a by-law.

DRUGS

**Dispensing
of drugs**

148.—(1) Subject to section 153, no person other than a pharmacist or an intern or a registered pharmacy student acting under the supervision of a pharmacist who is physically present shall compound, dispense or sell any drug in a pharmacy.

**Exception
for certain
drugs**

(2) Where a pharmacist or an intern is present in the pharmacy and is available to the purchaser for consultation, subsection 1 does not apply to the sale in a pharmacy of a drug other than,

- (a) a drug requiring a prescription for sale;
- (b) a drug referred to in Part I of Schedule D; or
- (c) a drug referred to in Schedule C.

**Misrepresen-
tation**

149. No person shall knowingly sell any drug under the representation or pretence that it is a particular drug that it is not, or contains any substance that it does not.

**Labelling
of Sched. D
drugs**

150.—(1) No person shall sell a drug listed in Schedule D unless it is labelled in accordance with the regulations.

**Record
of poisons**

(2) No person shall sell by retail a drug listed in Part I of Schedule D unless a record of the sale is made in such manner as the regulations prescribe.

(3) Subsections 1 and 2 do not apply to a drug when ^{Exception} it is dispensed pursuant to a prescription or forms part of the ingredients of a prescription.

151. Drugs referred to in Schedules D, E, F, G and N ^{Mailing of drugs} shall be sent through the mail only by registered mail.

152. The manager of every pharmacy shall keep or cause ^{Records of pharmacy} to be kept a record of every purchase and sale of a drug referred to in Schedule G or N in such form or manner as the regulations may prescribe.

153.—(1) No person shall sell by retail a substance listed ^{Sale of Sched. B drugs} in Schedule B unless it is labelled in accordance with the regulations.

(2) No person other than a pharmacist shall sell by retail ^{Item} a substance listed in Schedule B for the prevention or treatment of an ailment, disease or physical disorder, unless it is sold in the container in which it was received by the seller.

154.—(1) Subject to the regulations, no person shall sell ^{Prescription drugs} by retail any drug referred to in Schedule E, F, G or N, except on prescription given in such form, in such manner and under such conditions as the regulations prescribe.

(2) Subsection 1 does not apply to drugs referred to in ^{Exception} Part II of Schedule F that are sold in a container labelled by the manufacturer as for veterinary or agricultural use or sold in a form unsuitable for human use.

155.—(1) Every person who dispenses a drug pursuant to ^{Information noted on} a prescription shall ensure that the following information ^{prescription} is recorded on the prescription,

- (a) the name and address of the person for whom the drug is prescribed;
- (b) the name, strength (where applicable) and quantity of the prescribed drug;
- (c) the directions for use, as prescribed;
- (d) the name and address of the prescriber;
- (e) the identity of the manufacturer of the drug dispensed;
- (f) an identification number or other designation;

(g) the signature of the person dispensing the drug and, where different, also the signature of the person receiving a verbal prescription;

(h) the date on which the drug is dispensed;

(i) the price charged.

*Retention
of records*

(2) The records required under subsection 1 shall be retained for not less than six years.

*Identifica-
tion
markings*

(3) The container in which the drug is dispensed shall be marked with,

(a) the identification number that is on the prescription;

(b) the name, address and telephone number of the pharmacy in which the prescription is dispensed;

(c) the identification of the drug as to its name, its strength and its manufacturer, unless directed otherwise by the prescriber;

(d) the quantity where the drug dispensed is in solid oral dosage form;

(e) the name of the owner of the pharmacy;

(f) the date the prescription is dispensed;

(g) the name of the prescriber;

(h) the name of the person for whom it is prescribed;

(i) the directions for use as prescribed.

*Copy of
prescription*

156.—(1) Every person in respect of whom a prescription is presented to a pharmacist to be dispensed, unless otherwise directed by the prescriber, is entitled to have a copy of it marked as such, furnished to him, his agent, or a pharmacist acting on behalf of such person or agent.

*Disposal of
prescriptions*

(2) Prescriptions in a pharmacy that ceases to operate as a pharmacy shall be delivered to the persons, or agents of the persons, who presented the prescription or to another pharmacy that is reasonably readily available to such person or his agent, or failing either, to the College.

*Prescription
by doctor
out of
Ontario*

157. A pharmacist may dispense a drug pursuant to a written order signed by a physician or dentist licensed to

practise in a province in Canada other than Ontario, if in the professional judgment of the pharmacist the patient requires the drug immediately, but such order shall not be refilled.

158.—(1) Every person who dispenses a prescription may, ^{Substitution of interchangeable product} unless otherwise directed by the prescriber, select and dispense an interchangeable pharmaceutical product other than the one prescribed, if the interchangeable pharmaceutical product dispensed is listed as interchangeable in the Parcost C.D.I., and is lower in cost than the drug prescribed.

(2) Where a drug prescribed is listed in the Parcost C.D.I. ^{Generic description} and the identity of the manufacturer is not specified by the prescriber every person who dispenses a prescription shall select and dispense an interchangeable pharmaceutical product listed in the Parcost C.D.I.

(3) No person shall knowingly supply an interchangeable ^{cost} product under subsection 1 or 2 at a price in excess of the cost of the lowest priced interchangeable pharmaceutical product in his inventory and the maximum dispensing fee as set out in the Parcost C.D.I.

(4) No action or other proceeding lies or shall be instituted ^{No liability for substitution} against a prescriber or pharmacist on the grounds that an interchangeable pharmaceutical product other than the one prescribed was dispensed in accordance with this section.

159.—(1) Every person who operates or manages a pharmacy shall provide the Minister with such information from records required to be kept under section 155 as the Minister requests. ^{Reports by pharmacists}

(2) The Registrar shall provide the Minister with such information respecting substances referred to in the Schedules, except Schedule A, as the Registrar possesses and the Minister requests. ^{Reports by Registrar}

160.—(1) No person shall sell by wholesale any drug for the purpose of sale by retail to any person who is not entitled to sell the drug by retail. ^{Sale of drugs by wholesale}

(2) Every person supplying drugs by wholesale in Ontario shall register with the College as a drug wholesaler and furnish the Registrar with a signed statement showing, ^{Registration by wholesalers}

(a) his full name and address, or if a corporation the name of the corporation, the names and addresses of the president and directors thereof;

(b) the principal business address,

and with respect to his places of business where drugs are handled,

(c) the address of each place of business, agent or representative in Ontario;

(d) the name of the manager or person responsible for each place of business in Ontario;

(e) the date on which he proposes to commence business at each new location in Ontario.

*Furnishing
of informa-
tion*

(3) The information required by subsection 2 shall be furnished within thirty days after this Part comes into force and thereafter at least seven days before commencing business and any change in the information required by subsection 2 shall be furnished to the Registrar within seven days of the change.

Regulations

161.—(1) Subject to the approval of the Lieutenant Governor in Council, the Council may make regulations,

(a) prescribing the substances that are included in Schedules A, B, C, D, E, F, G and N for the purpose of this Part;

(b) naming substances for the purposes of clause *d* of subsection 1 of section 116 and specifying the provisions of this Act that shall apply in respect of such substances;

(c) naming publications for the purposes of clause *d* of subsection 1 of section 116;

(d) prescribing the percentage of any substance to be contained in any preparation referred to in any Schedule;

(e) prescribing the manner in which prescriptions shall be given in respect of the drugs referred to in Schedules E, F, G and N and the conditions under which such prescriptions may be given;

(f) authorizing the refilling of prescriptions without further prescription and prescribing the conditions under which prescriptions may be refilled without further prescription;

- (g) prescribing the manner in which records shall be kept of the purchase and sale of the drugs referred to in Schedules D, G and N;
- (h) pertaining to the transfer of prescriptions and the records to be kept by the transferor and the transferee;
- (i) designating substances listed in Schedule D that may be sold by persons not otherwise authorized under this Part and authorizing the sale of such substances by any persons or classes of persons not otherwise authorized under this Part and prescribing the conditions under which such substances shall be sold by such persons or classes of persons;
- (j) prescribing the labelling of substances listed in Schedule B for the purposes of section 153;
- (k) providing for the establishment and maintenance of patient record systems;
- (l) prescribing the types of containers to be used for containing any drug and the designs, specifications and labelling of containers used for containing any drug;
- (m) prescribing standards for accreditation of pharmacies including maintenance, operation, space, equipment and facilities required therefor;
- (n) providing for applications for certificates of accreditation of pharmacies, and the issuance of such certificates and their expiration and renewal and requiring the payment of fees therefor and prescribing the amounts thereof;
- (o) providing for the filing with the Registrar of information respecting the location of the place of practice and the residential address of pharmacists, the name and address of pharmacies in the Province of Ontario including the name and address of the owner and the manager of such pharmacies, and any changes thereof, and the form of such information and the time of filing;
- (p) providing for the information, instruments or documents to be filed with the Registrar by persons opening, acquiring, relocating or closing a pharmacy, the form thereof and the time of filing;
- (q) prescribing standards for the subdivision of premises so that drugs are restricted to a specified area and

so that the part of the premises to which the drugs are restricted may be rendered not accessible to the public, while the other part remains open;

- (r) regulating the handling, location and storage of drugs in a pharmacy.

Idem

- (2) The Lieutenant Governor in Council may make regulations,

- (a) regulating the use of containers in which drugs may be dispensed and designating organizations to test, certify and designate containers that meet standards approved by the Minister for such purposes as may be specified in the regulations, and requiring the use of containers that are so certified and designated except under such circumstances as are prescribed;

- (b) prescribing the Parcost C.D.I. for the purpose of this Part.

ENFORCEMENT

Restraining
orders

162.—(1) Where it appears to the College that any person does not comply with any provision of this Part or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the College may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

Appeal

(2) An appeal lies to the Supreme Court from an order made under subsection 1.

Recovery
of charges

163. A person who sells any drug in contravention of this Part or the regulations is not entitled to recover any charges in respect thereof.

Surrender
of cancelled
licence or
accreditation
certificate

164. Where a licence or certificate of accreditation is revoked or cancelled, the former holder thereof shall forthwith deliver the licence or certificate to the Registrar.

Penalties

165.—(1) Every person who is in contravention of section 124 is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$2,000 and for each subsequent offence to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both.

(2) Every person who not being a member uses an occupational designation prescribed by the regulations to be used by members or a like designation is guilty of an offence and on summary conviction is liable for the first offence to a fine of not more than \$1,000 and for each subsequent offence to a fine of not more than \$2,000.

(3) Every person who contravenes any provision of this Act or the regulations for which no penalty is otherwise provided is guilty of an offence and on summary conviction is liable to a fine not exceeding \$2,000.

166.—(1) Every owner or manager of a pharmacy is liable for every offence against this Part committed by any person in his employ or under his supervision with his permission, consent or approval, express or implied, and every director of a corporation operating a pharmacy is liable for every offence against this Part committed by any person in the employ of the corporation with his permission, consent or approval, express or implied.

(2) Where any person operates a pharmacy contrary to this Part or the regulations, the owner and manager of such pharmacy, or either of them, or any director of a corporation operating a pharmacy, may be proceeded against, and prosecution or conviction of either of them is not a bar to prosecution or conviction of the other.

167. In any prosecution under this Part,

Evidence

- (a) a certificate as to the analysis of any drug or poison purporting to be signed by a Food and Drug Analyst or Provincial Analyst is admissible in evidence as *prima facie* proof of the facts stated therein without proof of the appointment or signature of the analyst;
- (b) any article labelled as containing any drug is admissible in evidence as *prima facie* proof that the article contains the drug described on the label;
- (c) the label of the container of a drug dispensed pursuant to a prescription is admissible in evidence as *prima facie* proof that the drug named in the prescription was dispensed;
- (d) evidence that a drug is found in a shop or place in which business is transacted is admissible as *prima facie* proof that it was kept for sale;

- (e) evidence of the publishing of a sign, title or advertisement containing the name of an establishment or the owner thereof is admissible in evidence as *prima facie* proof that the sign, title or advertisement was published by the owner of the establishment.

Repeals

168.—(1) The following Acts are repealed:

1. *The Pharmacy Act*, being chapter 348 of the Revised Statutes of Ontario, 1970.
2. *The Pharmacy Amendment Act, 1972*, being chapter 99.
3. *The Pharmacy Amendment Act, 1973*, being chapter 126.

References

(2) Any reference in any Act or regulation to a pharmaceutical chemist registered under *The Pharmacy Act* shall be deemed to be a reference to a pharmacist licensed under this Part and any reference to *The Pharmacy Act* shall be deemed to be a reference to this Part.

MISCELLANEOUS

Commencement

169.—(1) This Act, except sections 1 to 5 and sections 7 to 168, comes into force on the day it receives Royal Assent.

Idem

(2) Sections 1 to 5 and sections 7 to 168, come into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

170. This Act may be cited as *The Health Disciplines Act, 1974*.

BILL 22

The Health Disciplines Act, 1974

1st Reading

April 2nd, 1974

2nd Reading

April 30th, 1974

3rd Reading

June 28th, 1974

THE HON. F. S. MILLER
Minister of Health

GAZON Assembly
XB
-B 56

BILL 23

Government
Publications
Government Bill

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

An Act to amend
The Regional Municipality of Haldimand - Norfolk Act,
1973

THE HON. J. WHITE
Treasurer of Ontario and Minister of Economics
and Intergovernmental Affairs



TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTES

SECTION 1. The subsection being repealed provided for the delegation by the Lieutenant Governor of the Minister's powers of approval under *The Planning Act* to the Regional Council. This matter is now dealt with in greater detail in sections 44b, 44c and 44d of *The Planning Act*.

SECTION 2. All existing land division committees and committees of adjustment in the Regional Area are dissolved on the 31st day of March, 1974, and the Regional Council is required to constitute a new land division committee and a new committee of adjustment on or before the 1st day of April, 1974. The subsection added will permit the appropriate new committee to take up and complete any applications that were pending before a committee on the date of its dissolution.

SECTION 3. Self-explanatory.

BILL 23**1974**

**An Act to amend
The Regional Municipality of
Haldimand-Norfolk Act, 1973**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 5 of section 55 of *The Regional Municipality of Haldimand-Norfolk Act, 1973*, being chapter 96, as enacted by the Statutes of Ontario, 1973, chapter 155, section 4, is repealed.
2. Section 58 of the said Act, as enacted by the Statutes of Ontario, 1973, chapter 155, section 4, is amended by adding thereto the following subsection:
 - (4) Where any application pending before a land division committee or a committee of adjustment that is dissolved under subsection 1 has not been finally disposed of on or before the 31st day of March, 1974,
 - (a) in the case of an application for a consent, the land division committee appointed under subsection 1, stands in the place and stead of the committee that is dissolved; and
 - (b) in the case of an application in respect of any matter other than a consent, the committee of adjustment, appointed under subsection 1, stands in the place and stead of the committee that is dissolved,

for the purpose of completing the disposition of such application.

3. Section 139 of the said Act, as enacted by the Statutes of Ontario, 1973, chapter 155, section 4, is amended by adding thereto the following subsection:

Jarvis Village
council to be
deemed
Hydro-
Electric Com-
mission
R.S.O. 1970,
c. 390

(6) The members of the council of the Village of Jarvis, as it exists on the 31st day of March, 1974, shall, until such date as the Minister may by order designate, be deemed to be a commission established under Part III of *The Public Utilities Act* for the Village of Jarvis Hydro-Electric System to be known as The Hydro-Electric Commission of the Village of Jarvis, which shall be deemed to be a local board of the area municipality of the City of Nanticoke, and all rights and obligations of the Village of Jarvis in relation to the Village of Jarvis Hydro-Electric System become rights and obligations of The Hydro-Electric Commission of the Village of Jarvis.

Commencement

4. This Act shall be deemed to have come into force on the 1st day of April, 1974.
5. This Act may be cited as *The Regional Municipality of Haldimand-Norfolk Amendment Act, 1974*.

Short title

An Act to amend
The Regional Municipality of
Haldimand-Norfolk Act, 1973

1st Reading

April 4th, 1974

2nd Reading

3rd Reading

THE HON. J. WHITE
Treasurer of Ontario and
Minister of Economics and
Intergovernmental Affairs

(*Government Bill*)

CA2ON

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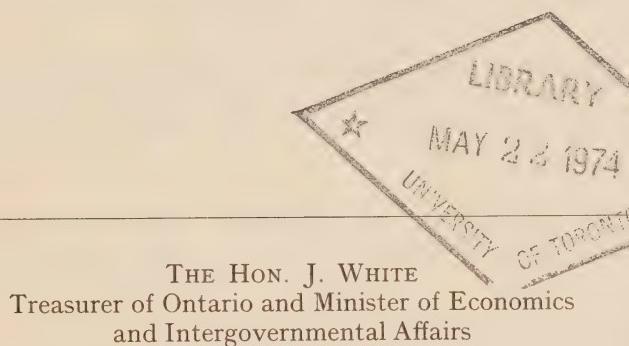
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BILL 23

Government
Publications

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

An Act to amend
The Regional Municipality of Haldimand - Norfolk Act,
1973



THE HON. J. WHITE
Treasurer of Ontario and Minister of Economics
and Intergovernmental Affairs

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

BILL 23**1974**

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 - (a) in the case of an application for a consent, the land division committee appointed under subsection 1, stands in the place and stead of the committee that is dissolved; and
 - (b) in the case of an application in respect of any matter other than a consent, the committee of adjustment, appointed under subsection 1, stands in the place and stead of the committee that is dissolved,

for the purpose of completing the disposition of such application.
3. Section 139 of the said Act, as enacted by the Statutes of Ontario, 1973, chapter 155, section 4, is amended by adding thereto the following subsection:

Jarvis Village
council to be
deemed
Hydro-
Electric Com-
mission
R.S.O. 1970,
c. 390

(6) The members of the council of the Village of Jarvis, as it exists on the 31st day of March, 1974, shall, until such date as the Minister may by order designate, be deemed to be a commission established under Part III of *The Public Utilities Act* for the Village of Jarvis Hydro-Electric System to be known as The Hydro-Electric Commission of the Village of Jarvis, which shall be deemed to be a local board of the area municipality of the City of Nanticoke, and all rights and obligations of the Village of Jarvis in relation to the Village of Jarvis Hydro-Electric System become rights and obligations of The Hydro-Electric Commission of the Village of Jarvis.

-Commence-
ment

4. This Act shall be deemed to have come into force on the 1st day of April, 1974.
5. This Act may be cited as *The Regional Municipality of Haldimand-Norfolk Amendment Act, 1974*.

Short title

BILL 23

An Act to amend
The Regional Municipality of
Haldimand-Norfolk Act, 1973

1st Reading

April 4th, 1974

2nd Reading

April 30th, 1974

3rd Reading

April 30th, 1974

THE HON. J. WHITE
Treasurer of Ontario and
Minister of Economics and
Intergovernmental Affairs

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

An Act to amend The Judicature Act

MR. ROY



EXPLANATORY NOTE

The Bill authorizes the use of the French language in writs, pleadings and proceedings in court in certain instances.

BILL 24**1974****An Act to amend The Judicature Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 127 of *The Judicature Act*, being chapter 228 of the ^{s.127,} ^{re-enacted} Revised Statutes of Ontario, 1970, is repealed and the following substituted therefor:

PLEADINGS TO BE IN ENGLISH OR FRENCH

127.—(1) Subject to subsection 2, writs, pleadings and proceedings in all courts shall be in the English language only, <sup>Writs,
pleadings
and
proceedings
in English</sup> but the proper or known names of writs or other process, or in English technical words, may be in the same language as has been commonly used.

(2) Writs, pleadings and proceedings may be in the French <sup>Writs,
pleadings
and
proceedings
in French</sup> language in all courts where,

(a) a consent in writing signed by all parties to the action is filed with the court, authorizing the use of the French language; and

(b) the court is located in a geographic area in Ontario which is designated as a bilingual region by the Government of Canada or where at least 10 per cent of the residents in the area have indicated French as their first language according to the most recent population census of the Government of Canada under the *Statistics Act* (Canada). <sup>R.S.C. 1970,
c. S-16</sup>

2. This Act comes into force on the day it receives Royal Assent. ^{Commencement}
3. This Act may be cited as *The Judicature Amendment Act, 1974*. ^{Short title}

BILL 24

An Act to amend The Judicature Act

1st Reading

April 4th, 1974

2nd Reading

3rd Reading

MR. ROY

(*Private Member's Bill*)

CAZON

XB

-B 56

BILL 25

Government
Bills

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

**An Act to impose a Tax on speculative Profits
resulting from the Disposition of Land**

THE HON. A. K. MEEN
Minister of Revenue



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTES

In accordance with the proposals contained in the Treasurer's Budget, this Bill imposes a tax on certain land in Ontario that is "designated land" within the meaning of the Bill. The rate of tax is 50 per cent of the increase in value of designated land after April 9, 1974, and is imposed only when the land is disposed of after that date. A change of control of a corporation or association of persons 50 per cent or more of whose assets consist of designated land will be treated as a disposition of the designated land occasioning tax unless entitled to exemption.

The person disposing of designated land is responsible for payment of the tax imposed on that land, and designated land does not include a mineral property that is a "Canadian resource property" under the *Income Tax Act* (Canada).

The Bill also provides that certain dispositions of designated land may be made tax free. These are: a person's principal residence or principal recreational property, transfers to the Crown, a municipality or a Crown agency, expropriations of land, land used for industrial or commercial purposes, other than apartment buildings, that includes buildings and improvements worth at least 40 per cent of the property sold, land on which the owner has erected a building or on which there is a building that the owner has renovated if the building is worth at least 40 per cent of the value of the land and building, and farming land disposed of within the family to enable the transferee to carry on farming.

Where control of a corporation owning designated land changes hands, an additional tax is imposed on the land at the rate applicable to conveyances under *The Land Transfer Tax Act, 1974*. The sale of shares in a land-owning corporation does not attract tax under that Act because no new registration of the land is required on the transfer of shares.

BILL 25**1974**

An Act to impose a Tax on speculative Profits resulting from the Disposition of Land

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Interpre-
tation

- (a) “adjusted value” means, in the case of any particular disposition of designated land to which the expression is being applied, the aggregate of,
 - (i) where the designated land was acquired by the transferor after the 9th day of April, 1974,
 - (A) otherwise than as described in sub-subclause B, C or D, the cost to the transferor of its acquisition,
 - (B) under the will or on the intestacy of a person dying after the 9th day of April, 1974, the fair market value of the designated land at the death of such person,
 - (C) by means of a disposition thereof made by a person or persons with whom the transferor was not dealing at arm’s length, the fair market value of the designated land at the time it was so acquired, or if higher, the cost of its acquisition, or
 - (D) as the result of a disposition described in clause *h* of section 4, the adjusted value applicable to the designated land on the first disposition of it after the 9th day of April, 1974, that was a disposition described in clause *h* of section 4 and made by a transferor of whose family the subsequent transferor is a member,

- (ii) where the designated land was acquired by the transferor on or before the 9th day of April, 1974, the fair market value of the designated land ascertained as at the 9th day of April, 1974,
- (iii) the cost of improvements made by the transferor to the designated land after the 9th day of April, 1974,
- (iv) for each twelve-month period that does not commence earlier than the 9th day of April, 1974 during which the transferor owns the designated land prior to his disposition of it, the lesser of either,
 - (A) 10 per cent of the amount determined under either subclause i or ii, whichever is applicable, or
 - (B) the aggregate of,
 - 1. the net maintenance costs incurred by the transferor after the 9th day of April, 1974 with respect to the designated land, and
 - 2. the costs incurred by the transferor in connection with disposing of the designated land if it was acquired by him after the 9th day of April, 1974, or where it was acquired by him on or before that date, the proportion of the costs incurred by the transferor in connection with disposing of the designated land that is in the same ratio to the whole of such costs as the fair market value of the designated land at the 9th day of April, 1974 is of the proceeds of disposition of the designated land by the transferor,
- (v) in the case of a disposition of designated land used in farming and to which clause h of section 4 does not apply, an amount

equal to compound interest at the rate of 10 per cent per annum calculated with annual rests upon the amount determined under subclause i or ii, whichever is applicable to the transferor, for the number of years preceding the disposition and not including any period of time prior to the 9th day of April, 1974 throughout which farming was carried on on the designated land by the transferor making the disposition to which clause h of section 4 does not apply, or by any previous transferor of whose family the transferor making the disposition to which clause h of section 4 does not apply was a member, or by members of the family of such previous transferor, or by a farming corporation to which a disposition by such previous transferor would be a disposition described in clause h of section 4;

- (b) "designated land" means all land situate in Ontario and every right, estate, interest, tenement or hereditament existing at law or in equity in, over, to, or affecting land or capable of being registered in any land registry office in Ontario, fixtures, and buildings or structures attached to land, whether or not owned by persons other than the owner of the freehold of the land to which they are attached, but "designated land" does not include any land in Ontario that is, within the meaning of paragraph c of subsection 15 of section 66 of the *Income Tax Act*<sup>1970-71
c. 63 (Can.)</sup>, "Canadian resource property";
- (c) "dispose", "disposed of", and expressions of like import when used with reference to designated land, mean a disposition which has or is deemed to have occurred with respect to designated land;
- (d) "disposition" includes,
 - (i) a sale or transfer, however effected, of any part of the beneficial interest in designated land,
 - (ii) the sale, transfer, assignment or exercise of an option providing for the acquisition of designated land,
 - (iii) the entering into a lease or similar arrangement of any kind with respect to designated land where the term of the lease or arrange-

ment, including any renewals or extensions thereof, may exceed ten years, and the sale, assignment or transfer of the rights under any such lease or arrangement exercisable by the lessee or in the case of an arrangement similar to a lease, by the person in a position similar to that of the lessee,

- (iv) any change in the entitlement to, or any accretion to, the beneficial interest in designated land as a result of the death of any person,
- (v) any change in the composition of, the membership of, the persons beneficially interested in, or the beneficiaries under any organization, syndicate, association of persons, partnership, joint venture, corporation without share capital or trust, 50 per cent or more of the assets of which consist of designated land, if the effect of such change not being a change in the beneficiaries under a trust is that control over the use of the designated land or the proceeds of its disposition is exercisable in fact, and whether directly or indirectly, by a different person or group of persons,
- (vi) the sale or transfer in any manner of the beneficial interest in, or the issue and allotment of, shares to which are attached 50 per cent or more of the voting rights ordinarily exercisable at meetings of the shareholders of the corporation and that are shares in the capital stock of a corporation 50 per cent or more of the assets of which consist of designated land, or
- (vii) the amalgamation, merger, consolidation or any other like arrangement of any two or more corporations, 50 per cent or more of the assets of any one of which consist of designated land, that has the effect of making control over the use of the designated land or the proceeds of its disposition or of a subsequent disposition exercisable in fact, and whether directly or indirectly, by a different person or group of persons,

but for greater certainty "disposition" does not include any transfer of property for the purpose only of securing a debt or a loan, or any transfer by a

creditor for the purpose only of returning property that had been used as security for a debt or a loan, or any transfer of property by virtue of which there is a change in the legal ownership of the property without any change in the beneficial ownership thereof;

(e) "farming" includes tillage of the soil, the breeding, raising or grazing of live stock of all kinds, the raising of poultry and the production of poultry products, fur farming, dairy farming, fruit growing, the growing of food for human consumption or for the feeding of live stock, and the keeping of bees;

(f) "farming corporation" means a corporation,

(i) every share of which that confers on the holder thereof the right to vote is, at the date of any disposition with respect to which the expression is being applied, owned either by the transferor making the disposition or by a member of his family, and

(ii) 95 per cent of the assets of which are "farming assets" within the meaning of section 17a of *The Succession Duty Act*;

R.S.O. 1970.
c. 449

(g) "member of the family" means grandparents, parents, uncles, aunts, the spouse, brothers, sisters, children, grandchildren, nephews, nieces, sons-in-law, daughters-in-law, mother-in-law or father-in-law of a person with respect to whom the expression is being applied;

(h) "Minister" means the Minister of Revenue;

(i) "municipality" includes a district, regional or metropolitan municipality, a local board, as defined in *The Municipal Affairs Act*, of any municipality, R.S.O. 1970.
c. 118 and an elementary or secondary school board or board of education having jurisdiction in territory without municipal organization;

(j) "net maintenance costs" means all costs incurred in connection with the maintenance of the designated land to which the expression is being applied, other than costs incurred in connection with the disposition of designated land, and after deducting any income howsoever earned by the transferor from

the designated land, including income from his own use of the designated land or from the granting of any right or interest therein, but no deduction shall be made with respect to income earned from farming the designated land by a farmer who is carrying on farming thereon and whose chief source of income is from farming and who owns the designated land;

(k) "prescribed" means prescribed by regulation;

(l) "proceeds of disposition" includes,

- (i) the gross sale price or any other consideration given for the disposition of designated land or received by the transferor of designated land, the assumption, undertaking, extinguishment or release of any liability of the transferor or affecting designated land disposed of, and the value of any benefit of whatsoever kind conferred on the transferor or on some person at the direction of the transferor as part of the arrangement relating to the disposition of designated land, or
- (ii) an amount not less than the fair market value of the designated land disposed of where there is a disposition thereof by a transferor to a person or persons with whom the transferor is not dealing at arm's length, or where the disposition is by way of gift,

but no proceeds of disposition arise on a disposition under the last will and testament of any person or on the intestacy of any person;

(m) "regulation" means a regulation made under this Act;

(n) "tax" unless expressly otherwise restricted, means the taxes imposed by this Act and the interest payable thereon;

(o) "taxable value" when used in relation to designated land means the amount by which the proceeds of disposition of designated land exceed the adjusted value of that designated land at the time of its disposition, and the taxable value of designated land shall be computed separately for each disposition of designated land;

(p) "transferor" means the person or persons who make or effect any disposition with respect to designated land with respect to which the expression is being applied;

(q) "Treasurer" means the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs.

(2) Persons who, for the purposes of the *Income Tax Act*<sup>1970-71.
c. 63 (Can.)</sup>, would not be considered as dealing at arm's length shall not be considered to deal at arm's length for the purposes of this Act.

(3) For the purpose of this Act, "disposition" includes any arrangement or ordering in the nature of a disposition, whether by one transaction or a number of transactions effected for the purpose, that in any manner effectively changes the identity of the persons who are entitled in fact or in law to control or derive a profit from designated land or its disposition.

(4) For greater certainty, it is declared that where a disposition described in subclause v, vi or vii of clause d of subsection 1 occurs, it is deemed to be a disposition of or with respect to any designated land referred to in that one of the said subclauses that describes the disposition that has occurred.

(5) For the purpose of this Act, "control" means control defined by another corporation, individual or trust that is in fact exercising effective control either directly or indirectly and either through the holding of shares of the corporation or of any other corporation or through the holding of a significant portion of any class of shares of the corporation or of the outstanding debt of the corporation or of any shareholder or member of the corporation, or by any other means whether of a like or different nature.

(6) Where designated land is disposed of by a corporation, Distribution on winding up of corporation 50 per cent or more of the assets of which consist of designated land, to its shareholders as a part of the winding up and dissolution of the corporation, the adjusted value of the designated land on the first subsequent disposition of it by such shareholders shall be computed as though the corporation, whether or not then in existence, and such shareholders were the same person.

(7) Where, on the disposition of any designated land, the Apportionment adjusted value applicable to the designated land disposed of is determinable or ascertainable by reference to a larger

amount of designated land of which that being disposed of is only a part, the adjusted value applicable to the designated land being disposed of shall be apportioned in such reasonable manner as will reflect the proportional value that the designated land disposed of is to the value of the larger amount of designated land.

Idem

(8) For the purpose of subclause iv of clause *a* of subsection 1, where the number of months (excluding any period of time prior to the 9th day of April, 1974) during which the transferor owned the designated land prior to his disposition of it exceeds the largest number of such months that is exactly divisible by twelve,

- (a) sub-subclause A of the said subclause iv applies to such excess number of months as though the number ten appearing in sub-subclause A were that number that is in the same ratio to ten as the number of such excess months is to twelve; and
- (b) paragraph 1 of sub-subclause B of the said subclause iv applies to include net maintenance costs incurred by the transferor during such excess number of months.

Tax on
designated
land

2.—(1) Subject to section 4, where, after the 9th day of April, 1974, any disposition of designated land occurs, there shall be imposed and levied, for the uses of Her Majesty in right of Ontario, upon the designated land with respect to which such disposition occurs a tax computed at the rate of 50 per cent of the taxable value of designated land with respect to which such disposition occurs.

Idem

(2) Where there is a disposition within the meaning of subclause vi or vii of clause *d* of subsection 1 of section 1 of any designated land and the result of the disposition is that control of the corporation beneficially interested in the designated land is exercisable by a person or a group of persons different from those by whom control of the corporation was exercisable before the disposition, there shall be imposed and levied, for the uses of Her Majesty in right of Ontario, upon the designated land a tax, in addition to the tax imposed by subsection 1, calculated on the proceeds of disposition and computed at the rate of,

- (a) where the corporation beneficially interested in the designated land is, immediately after the disposition has occurred, not a non-resident corporation as defined in *The Land Transfer Tax Act, 1974*, three-tenths of 1 per cent on the first \$35,000 of the proceeds of

1974. c. ...

disposition and six-tenths of 1 per cent on the remainder of the proceeds of disposition; or

- (b) where the corporation beneficially interested in the designated land is, immediately after the disposition has occurred, a non-resident corporation as defined in *The Land Transfer Tax Act, 1974*, 20 per cent of the proceeds of disposition.

(3) The tax is payable by the transferor of any designated land disposed of by him and shall be paid at the time of the disposition of the designated land, and if not then paid, the tax bears interest at the rate of 9 per cent per annum until a different rate is prescribed. ^{Payment of tax}

(4) The tax is payable to the Treasurer and shall be remitted ^{Idem} to the Minister by the person responsible for its payment.

3.—(1) An administrator, executor, trustee or person acting in a fiduciary capacity for the transferor of designated land that is disposed of is not, as such, personally liable for the tax, but no person in Ontario shall pay, deliver, assign or transfer to or for the benefit of the transferor or of any person at the direction of the transferor any money or property coming into his hands as administrator, executor, trustee or person acting in a fiduciary capacity and by reason of the disposition of designated land without deducting therefrom or collecting an amount sufficient to pay the tax on the designated land disposed of. ^{Trustees not personally liable}

(2) Every such administrator, executor, trustee or person acting in a fiduciary capacity for the transferor who makes or permits any payment, delivery, assignment or transfer referred to in subsection 1 without deducting or collecting an amount sufficient to secure the tax is guilty of an offence and on summary conviction is liable to pay to the Treasurer as a penalty an amount equal to 150 per cent of the amount of such tax. ^{Penalty}

(3) An administrator, executor, trustee or person acting in a fiduciary capacity for the transferor who has deducted or collected any money on account of the tax shall remit it to the Minister and is deemed to be a person who has received money for the Crown or for which he is accountable to the Crown within the meaning of *The Financial Administration Act*. ^{Tax held by trustee R.S.O. 1970, c. 166}

4. No designated land is liable to the tax imposed by subsection 1 of section 2, ^{Exemptions}

- (a) when the designated land is taken under statutory

authority or is sold to a person by whom notice of an intention to take it under statutory authority was given;

- (b) when the designated land is disposed of to Her Majesty in right of Ontario, a Crown agency within the meaning of *The Crown Agency Act*, a municipality, Ontario Hydro, Her Majesty in right of Canada, or to an agent of Her Majesty in right of Canada;
- (c) when the designated land is disposed of by a corporation, 50 per cent or more of the assets of which consist of designated land, to its shareholders as part of the winding up and dissolution of the corporation;
- (d) when the designated land disposed of is, at the time of its disposition, predominantly used as a tourist resort of a class, kind or designation prescribed by the Minister by regulation, or for commercial or industrial purposes, other than the rental of apartment suites or residential accommodation for use as the principal residence of the lessee, and if the designated land so disposed of contains buildings, structures or other capital improvements, excluding any costs or value attributable to subdividing and servicing the designated land, that have a value, at the time of the disposition, equal to 40 per cent or more of the proceeds of disposition of the designated land;
- (e) when the designated land disposed of is the principal residence of the transferor ordinarily inhabited by him or by him and his spouse, children or other dependants, together with land subjacent to the principal residence and land immediately contiguous to such subjacent land to the extent that such subjacent land and the immediately contiguous land do not exceed ten acres;
- (f) when the designated land disposed of is not designated land described in clause e or is not immediately contiguous thereto, and is used by the transferor or by members of his family for his or their personal recreation and enjoyment and is his principal recreational property, but this clause does not apply to any part of such designated land so disposed of in excess of twenty acres or where the disposition is to a non-resident person as defined in *The Land Transfer Tax Act, 1974*;

(g) when the designated land disposed of includes a building or structure,

(i) that the transferor has constructed or caused to be constructed, or

(ii) that the transferor has renovated or caused to be renovated at a cost of not less than 20 per cent of,

(A) where the designated land was acquired by him after the 9th day of April, 1974, the cost to him of his acquisition of the designated land or the fair market value of the designated land at the time of its acquisition by the transferor if such fair market value is greater than the cost of acquisition, or

(B) where the designated land was acquired by the transferor on or before the 9th day of April, 1974, its fair market value ascertained as at the 9th day of April, 1974,

and that has a value at the time of the disposition of the designated land of not less than 40 per cent of the total proceeds of disposition of the designated land; or

(h) when the designated land disposed of is, at the time of its disposition, used by the transferor, by members of the family of the transferor, by a farming corporation, or by the transferor and members of his family in farming, and the disposition of such designated land is to a member or members of the family of the transferor or to a farming corporation for the purpose of enabling the person to whom the disposition is made to carry on farming on the designated land.

5.—(1) Every tax imposed upon designated land by this Act is, until paid, a special lien in favour of Her Majesty in right of Ontario upon the designated land and has complete priority over every claim, privilege, lien, encumbrance, right, title or interest of any person that arose or came into existence as part of or subsequent to the disposition of the designated land as a result of which tax was imposed

on the designated land, and such special lien has priority over every execution in the hands of any sheriff or other officer that affects the designated land, whether the designated land was subject to the execution before or after the disposition of the designated land.

Where
no lien
attaches

(2) The special lien conferred by this Act does not attach to any designated land disposed of where the Minister has given his certificate that no lien is claimed with respect to the designated land, but the giving of the certificate does not destroy the special lien for tax resulting from any disposition of designated land occurring after the date as of which the certificate is given, and the giving of the certificate does not impair or relieve the transferor from his responsibility to pay any tax imposed by this Act.

Idem

(3) Where designated land is disposed of and, in order to recognize or give effect to the disposition, it is necessary to register upon the title to the designated land disposed of an instrument or writing under the registry system or land titles system, the special lien conferred by this Act does not attach to the designated land in respect of such disposition if there is attached to or made part of such instrument or writing, at the time it is tendered to a land registrar for registration, the affidavit of the transferor, or of some individual authorized in writing by the transferor to make such affidavit, stating that the disposition of designated land evidenced in the instrument or writing attached to such affidavit or of which the affidavit is a part is a disposition described in a clause and, where applicable, a subclause (which clause and subclause shall be expressly named in the affidavit) of section 4 of this Act, but the making of such affidavit does not impair or relieve the transferor from his responsibility to pay any tax imposed by this Act.

Notice of
intended
sale

(4) Before the issue of a warrant under subsection 5, the Minister shall send by mail or by registered mail, or deliver by personal service, a notice to all persons who have an interest, encumbrance or charge registered under the land titles system or the registry system against the designated land for the sale of which the warrant is to be issued that he intends to have the designated land that is subject to the special lien conferred by this Act sold pursuant to subsection 5, and such notice shall be given not less than thirty days or more than sixty days before the issue of the warrant, and shall be sent, in the case of a notice sent by mail, to the latest known address of each person to whom notice is to be given and to such other address as, in the opinion of the Minister, may be more likely to bring the notice to the person's attention.

(5) Subject to subsection 4, the Minister may, by his warrant directed to the sheriff of the county, district or judicial district in which is situate any designated land that is subject to the special lien conferred by this Act, require the sheriff to sell the designated land within six months or such longer period as is stated in the warrant, and the sheriff, upon receiving the warrant, shall proceed within the period specified to sell the land in the same manner as for a sale under a writ of execution issued out of the Supreme Court, and any person purchasing from the sheriff at such a sale shall take good title to the designated land free and clear of all encumbrances and claims of any kind of all persons whatsoever that do not have priority over the special lien but subject to all the rights and encumbrances of persons who have an interest in the designated land that have priority over the special lien.

(6) The proceeds of sale received by the sheriff from a sale under a warrant authorized by subsection 5 shall be applied first to pay the costs and expenses of the sheriff in conducting the sale and next in payment of the amount of tax that was a special lien on the designated land conferred by this Act, and any surplus thereafter remaining shall be paid, in order of their priorities, to those whose rights in the designated land were subject to the special lien, and, if the order of those priorities cannot be established by the sheriff, shall be paid into court to be dealt with as the court shall direct.

(7) At any time prior to a sale authorized by subsection 5, any person interested in the designated land affected by the special lien conferred by this Act may pay to the Minister a sum sufficient to discharge the special lien, and if the special lien is discharged by some person having an encumbrance against the designated land, the amount accepted by the Minister may be added to that person's encumbrance and shall, for all purposes and in every court, thereafter be treated as part of the encumbrance and shall bear interest at the rate provided for in the encumbrance and shall be collectable in the same way as the encumbrance is enforceable.

(8) Upon such conditions as he may impose, the Minister may abandon, postpone, release or waive with respect to all or any part of any designated land any special lien conferred by this Act.

6. Where the result of one or more sales, exchanges, declarations of trust, or other transactions of any kind whatever is that a transferor has disposed of property under circumstances such that he may reasonably be considered to have

artificially or unduly reduced the amount of the taxable value of designated land that he has disposed of, the taxable value shall be computed as if such reduction had not occurred.

Refund

7. Where a person has paid an amount under this Act as tax that is not payable as tax under this Act, the Minister may, upon receipt of satisfactory evidence that the amount was wrongly paid, authorize the Treasurer to refund such amount or any part thereof, but no refund shall be made unless it is applied for within three years after the date of the payment of any amount that is alleged not to have been payable as tax under this Act.

Assessment

8.—(1) Where any person responsible for the payment of tax fails to pay it as required under this Act, the Minister may make an assessment of the tax for which such person is responsible and which has not been paid.

Notice of assessment

(2) Where the Minister has made an assessment under subsection 1, he shall send by mail or by registered mail or deliver by personal service a notice of assessment to the person so assessed, and the amount of the assessment shall be remitted to the Minister by the person so assessed within thirty days from the date of mailing or delivery of the notice of assessment.

Idem

(3) Where the Minister has made an assessment under subsection 1, the notice of assessment may provide that the amount assessed is payable forthwith.

Assessment from time to time

(4) The Minister may, at any time he considers reasonable, assess or reassess any tax payable by any person under this Act.

Assessment on inspection

(5) Where it appears from an inspection, audit or examination of the books of account, records or documents of any person that this Act or the regulations have not been complied with, the person making the inspection, audit or examination shall calculate the tax payable in such manner and form and by such procedure as the Minister considers adequate and expedient, and the Minister shall assess the amount of the tax.

Notice of assessment under subs. 4 or 5

(6) The Minister shall send by mail or by registered mail or deliver by personal service a notice of the assessment made under subsection 4 or 5 to the person so assessed at his latest known address, and the notice may provide that the amount assessed is payable forthwith.

Liability to tax not affected

(7) Liability for tax is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

(8) The Minister is not bound by any information delivered ^{Minister not bound by} by or on behalf of any person responsible for the payment of information the tax and may, notwithstanding any information that has been delivered or if no information has been delivered, assess the tax payable under this Act.

(9) An assessment, subject to being varied or vacated on ^{Assessment valid and binding} an objection or appeal and subject to a reassessment, shall be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto.

(10) The amount of any assessment is payable within the ^{Idem} time required by the notice of assessment whether or not an objection or appeal from the assessment is made or taken.

9.—(1) Where a person objects to an assessment made ^{Notice of objection} under section 8, he may, within ninety days after the day of mailing or delivery by personal service of the notice of assessment, serve on the Minister a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts.

(2) A notice of objection under this section shall be ^{Service} served by being sent by registered mail addressed to the Minister.

(3) Upon receipt of a notice of objection, the Minister ^{Reconsideration} shall with all due despatch reconsider the assessment and vacate, confirm or vary the assessment or reassess, and he shall thereupon notify the person who has made the objection of his action by registered mail.

10.—(1) After the Minister has given the notification ^{Appeal} required by subsection 3 of section 9, a person who has served notice of objection under section 9 may appeal to the Supreme Court to have the assessment vacated or varied or reassessed, but no appeal under this section shall be instituted after the expiration of ninety days from the day on which notice has been mailed to such person under subsection 3 of section 9, and an appeal under this section shall not be made to the Divisional Court.

(2) An appeal to the Supreme Court shall be instituted ^{Appeal, how instituted} by serving on the Minister a notice of appeal in duplicate in the prescribed form and by filing a copy thereof with the Registrar of the Supreme Court or with the Local Registrar of the Supreme Court for the county, district or judicial district in which is situate the designated land the tax imposed on which is under appeal.

Service	(3) A notice of appeal shall be served on the Minister by being sent by registered mail addressed to the Minister.
Contents of notice of appeal	(4) The person appealing shall set out in his notice of appeal a statement of the allegations of fact and the statutory provisions and reasons that he intends to submit in support of his appeal.
Reply to notice of appeal	(5) After the service on him of a notice of appeal under this section, the Minister shall with all due despatch serve on the person appealing and file in the Supreme Court where the notice of appeal was filed a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such further allegations of fact and of such statutory provisions and reasons as he considers relevant.
Matter deemed action	(6) Upon the filing in the Supreme Court of the material referred to in subsection 5, the matter shall be deemed to be an action in the court, and the practice and procedure of the court, including the right of appeal and the practice and procedure relating to appeals, apply to every matter that is deemed to be an action under this subsection, and every judgment and order given or made in every such action may be enforced in the same manner and by the like process as a judgment or order given or made in an action commenced in the court.
Disposition of appeal	(7) The court may dispose of an appeal by allowing it, by dismissing it, or by allowing it in part and directing the Minister to vacate the assessment, vary the assessment or reconsider the assessment and reassess as indicated by the judgment of the court.
Idem	(8) In delivering judgment disposing of an appeal, the court may order payment or refund of tax by the appellant or by the Treasurer, as the case may be, and may make such order as to cost as is considered proper.
Irregularities	(9) No assessment shall be vacated or varied on appeal by reason only of an irregularity, informality, omission or error on the part of any person in the observance of any directory provision of this Act.
Extension of time	(10) The time within which a notice of objection under subsection 1 of section 9 or a notice of appeal under subsection 1 of this section is to be served may be extended by the Minister if application for extension is made before expiration of the time for service of the notice of objection or notice of appeal, as the case may be.

11. Any payment to the Treasurer under this Act, other than a payment of penalties or fines imposed for offences under this Act, shall first be applied to any interest payable on any tax imposed by this Act.

12.—(1) Any person thereunto authorized by the Minister for any purpose related to the administration or enforcement of this Act may at all reasonable times enter into any premises where any business is carried on or any property is kept or anything is done in connection with any business or where any books or records are or should be kept, and may,

- (a) audit or examine the books, records, accounts, vouchers, letters, telegrams, or other documents that relate or may relate to any disposition of designated land or to the amount of tax payable under this Act;
- (b) examine any designated land disposed of or any property the value of which formed or may have formed part of the adjusted value or proceeds of disposition referable to any disposition of designated land, or any property, process or matter an examination of which may, in his opinion, assist him in determining the accuracy of any information that was or should have been furnished to the Minister or the amount of any tax payable under this Act;
- (c) require any transferor or any person to whom a disposition of designated land has been or may have been made or, if such transferor or person is a partnership or corporation, require a partner or the president, manager, secretary or any director, agent or representative thereof or any other person on the premises of such transferor or person to give him all reasonable assistance with his audit or examination and to answer all questions relating to the audit or examination either orally or, if he so requires, in writing, on oath or by statutory declaration, and for that purpose require such person to attend at the premises with him; and
- (d) if during the course of an audit or examination it appears to him that there has been a contravention of this Act or the regulations, seize and take away any of the records, books, accounts, vouchers, letters, telegrams and other documents and retain them until they are produced in any court proceedings.

Idem

(2) The Minister may, for any purpose related to the administration or enforcement of this Act, by registered letter or by a demand served personally, require from any transferor, or if such transferor is a partnership or corporation, from a partner or the president, manager, secretary or any director, agent or representative thereof,

- (a) any information concerning designated land or a disposition of designated land that is believed to have occurred; or
- (b) production, or production on oath, of any books, letters, accounts, invoices, statements, financial or otherwise, or other documents,

within such reasonable time as is stipulated therein.

Idem

(3) The Minister may, for any purpose related to the administration or enforcement of this Act, by registered letter or by a demand served personally, require from any person, partnership, syndicate, trust or corporation holding any amount for or paying or liable to pay any amount to a transferor or to any person to whom a disposition of designated land has been or may have been made production, or production on oath, of any books, letters, accounts, invoices, statements, financial or otherwise, or other documents within such reasonable time as is stipulated therein.

Idem

(4) The Minister may, for any purpose related to the administration or enforcement of this Act, with the approval of a judge of the Supreme Court, which approval the judge is hereby empowered to give upon *ex parte* application, authorize in writing an officer of the Ministry of Revenue, together with such members of the Ontario Provincial Police Force or other peace officers as he calls upon to assist him and such other persons as are named therein, to enter and search, if necessary by force, any building, receptacle or place for documents, books, records, papers or things that may afford evidence as to the contravention of any provision of this Act or the regulations and to seize and take away any such documents, books, records, papers or things and retain them until they are produced in any court proceedings.

Documents
to prove
tax
liability

(5) The Minister may, by registered letter or by a demand served personally, require the production under oath or otherwise by any person, partnership, syndicate, trust or corporation, or by his or its agent or officer, of any letters, accounts, invoices, statements, financial or otherwise, books

or other documents in the possession or in the control of such person, partnership, syndicate, trust or corporation or of his or its agent or officer for the purpose of determining what tax, if any, is imposed by this Act on designated land and what person is responsible for its payment, and production thereof shall be made within such reasonable time as is stipulated in such registered letter or demand.

(6) Where a book, record or other document has been seized,^{Copies} examined or produced under this section, the person by whom it is seized or examined or to whom it is produced, or any officer of the Ministry of Revenue, may make or cause to be made one or more copies thereof, and a document purporting to be certified by the Minister or a person thereunto authorized by the Minister to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have had if it had been proved in the ordinary way.

(7) No person shall hinder or molest or interfere with^{Compliance} any person doing anything that he is authorized by this section to do or shall prevent or attempt to prevent any person doing any such thing.

(8) Notwithstanding any other law to the contrary, every^{Idem} person shall, unless he is unable to do so, do everything he is required by this section to do.

(9) Declarations or affidavits in connection with statements^{Administration of oaths} of information submitted pursuant to this section may be taken before any person having authority to administer an oath or before any person specially authorized for that purpose by the Lieutenant Governor in Council, but any person so specially authorized shall not charge any fee therefor.

13.—(1) Upon default of payment of any amount assessed^{Recovery of tax} under section 8,

(a) the Minister may bring an action for the recovery thereof in any court in which a debt or money demand of a similar amount may be collected, and every such action shall be brought and executed in and by the name of the Minister or his name of office and may be continued by his successor in office as if no change had occurred and shall be tried without a jury; and

(b) the Minister may issue a warrant directed to the sheriff of any county, district or judicial district in which any property of a person liable to make a

payment or remittance under this Act is located or situated for the amount of the tax owing by him, together with interest thereon from the date of the issue of the warrant and the costs and expenses of the sheriff, and such warrant has the same force and effect as a writ of execution issued out of the Supreme Court.

Compliance proved by affidavit

(2) For the purpose of any proceeding or prosecution taken or instituted under this Act, the facts necessary to establish compliance on the part of the Minister with this Act as well as the failure of any person to comply with the requirements of this Act shall, unless evidence to the contrary satisfactory to the court is adduced, be sufficiently proved in any court of law by affidavit of the Minister or of any officer of the Ministry of Revenue.

Remedies to recover tax

(3) The use of any of the remedies provided by this section does not bar or affect any of the other remedies therein provided, and the remedies provided by this Act for the recovery and enforcement of the payment of any tax are in addition to any other remedies existing by law, and no action or other proceeding taken in any way prejudices, limits or affects any lien, charge or priority existing under this Act or at law in favour of Her Majesty in right of Ontario.

Garnishment

14.—(1) When the Minister has knowledge or suspects that a person is or is about to become indebted or liable to make any payment to a person liable to make a payment or remittance under this Act, he may, by registered letter or by a letter served personally, require the first-named person to pay the moneys otherwise payable to the second-named person in whole or in part to the Treasurer on account of the liability under this Act.

Idem

(2) The receipt of the Treasurer for moneys paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

Liability of debtor

(3) Every person who has discharged any liability to a person liable to make a payment or remittance under this Act without complying with the requirements under this section is liable to pay to the Treasurer an amount equal to the liability discharged or the amount that he was required under this section to pay to the Treasurer, whichever is the lesser.

Service of garnishee

(4) Where a person who is or is about to become indebted or liable to make a payment to a person liable to make a payment or remittance under this Act carries on business under

a name or style other than his own name, the registered or other letter under subsection 1 may be addressed to the name or style under which he carries on business and in the case of personal service, shall be deemed to have been validly served if it has been left with an adult person employed at the place of business of the addressee.

(5) Where the persons who are or are about to become indebted or liable to make a payment to a person liable to make a payment or remittance under this Act carry on business in partnership, the registered or other letter under subsection 1 may be addressed to the partnership name and, in the case of personal service, shall be deemed to have been validly served if it has been served on one of the partners or left with an adult person employed at the place of business of the partnership.

(6) Where the Minister has under this section required an employer to pay to the Treasurer on account of an employee's liability under this Act moneys otherwise payable by the employer to the employee as remuneration, the requirement is applicable to all future payments by the employer to the employee in respect of remuneration until the liability under this Act is satisfied and operates to require payments to the Treasurer out of each payment of remuneration of such amount as may be stipulated by the Minister in the registered letter or letter served personally.

15.—(1) Every person who recklessly or knowingly makes an affidavit provided for in subsection 4 of section 5 that is false in some material particular is guilty of an offence and on summary conviction is liable to a fine of not less than \$100 plus an amount that is not less than the tax imposed on the designated land by subsection 1 of section 2, as determined under subsection 3, and resulting from the disposition with respect to which the affidavit relates.

(2) Every person who is required to remit to the Minister the tax imposed by this Act and who fails to remit the tax is guilty of an offence and on summary conviction is liable to a fine of not less than \$100 and an additional amount of not less than the tax, as determined under subsection 3, that should have been remitted.

(3) The Minister shall determine the amount of the tax referred to in subsection 1 or 2 from such information as is available to him, and shall issue a certificate as to the amount, but except where the Minister considers that there has been deliberate evasion of this Act, he shall not take into account a period of more than three years in determining the amount of tax referred to in the certificate.

Idem

(4) In any prosecution under subsection 1 or 2, a certificate that is signed or that purports to be signed by the Minister or Deputy Minister of Revenue and that states the amount of tax is *prima facie* evidence of the amount of tax referred to in subsection 1 or 2 and of the authority of the person giving or making the certificate without any proof of appointment or signature.

Information
for more
than one
offence

(5) Any information in respect of an offence under this Act may be for one or more than one offence, and no information, warrant, conviction or other proceeding in a prosecution under this Act is objectionable or insufficient by reason of the fact that it relates to two or more offences.

Tax not
affected

(6) Neither the application of any provision of this section nor the enforcement of any penalty under this Act suspends or affects any remedy for the recovery of any tax payable under this Act.

Offences

16.—(1) Every person who contravenes section 12 is guilty of an offence and on summary conviction is liable to a fine of \$25 for each day during which the default continues.

Idem

(2) Every person who contravenes any of the provisions of this Act or the regulations for which no other penalty is provided is guilty of an offence and on summary conviction is liable for a first offence to a fine of not less than \$25 and not more than \$200, and for any subsequent offence to a fine of not less than \$100 and not more than \$1,000.

Idem

(3) Every person who has,

- (a) made, participated in, assented to or acquiesced in the making of false or deceptive statements required by or under this Act or the regulations;
- (b) to evade payment of a tax imposed by this Act, destroyed, altered, mutilated, secreted or otherwise disposed of any record, document or thing;
- (c) wilfully, in any manner, evaded or attempted to evade compliance with this Act or payment of tax imposed by this Act; or
- (d) conspired with any person to commit any offence described in clause *a*, *b* or *c*,

is guilty of an offence and on summary conviction, in addition to any penalty otherwise provided by this Act, is

liable to a fine of not less than \$200 and not more than an amount equal to double the amount of the tax that should have been remitted or that was sought to be evaded, or to imprisonment for a term of not more than two years, or to both.

(4) Any officer, director or agent of a corporation who^{Idem} directed, authorized, assented to, acquiesced in or participated in the commission of any act which is an offence under this Act for which the corporation would be liable for prosecution is guilty of an offence and on summary conviction is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

17. An information in respect of an offence against this ^{Limitation} Act shall be laid within six years of the time when the matter of the information arose.

18.—(1) Except as authorized by this section, no person ^{Communication of information} employed by the Government of Ontario shall,

- (a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister for the purposes of this Act; or
- (b) knowingly allow any person to inspect or to have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.

(2) Notwithstanding any other Act, but subject to sub-^{Officials not compellable as witnesses} section 3, no person employed by the Government of Ontario shall be required, in connection with any legal proceedings,

- (a) to give evidence relating to any information obtained by or on behalf of the Minister for the purposes of this Act; or
- (b) to produce any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.

(3) Subsections 1 and 2 do not apply in respect of, ^{Exceptions for legal proceedings}

- (a) criminal proceedings under any Act of the Parliament of Canada; or
- (b) proceedings in respect of the trial of any person for an offence under an Act of the Legislature; or

(c) proceedings relating to the administration or enforcement of this Act or the collection or assessment of tax.

Exception for internal administration

(4) A person employed by the Government of Ontario may, in the course of his duties in connection with the administration or enforcement of this Act,

(a) communicate or allow to be communicated to an official or authorized person employed by the Government of Ontario in the administration and enforcement of any laws relating to the raising of revenues for provincial purposes any information obtained by or on behalf of the Minister for the purposes of this Act; and

(b) allow an official or authorized person employed by the Government of Ontario in the administration or enforcement of any laws relating to the raising of revenues for provincial purposes to inspect or have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.

Exception for objection or appeals, etc.

(5) Notwithstanding any other provision of this Act, the Minister may permit a copy of any book, record, writing, return or other document obtained by him or on his behalf for the purposes of this Act to be given to,

(a) the person from whom the book, record, writing, return or other document was obtained; or

(b) any person,

(i) for the purposes of any objection or appeal that has been or may be taken by that person under this Act arising out of any assessment of tax, interest or penalties under this Act in connection with which the book, record, writing, return or other document was obtained, or

(ii) by whom any amount payable under this Act is payable or has been paid,

or the legal representative of any person mentioned in clause *a* or *b* or the agent of any such person authorized in writing in that behalf.

Exception for tax enforcement in other jurisdictions

(6) Notwithstanding any other provision of this Act, the Minister may permit information or a copy of any book,

record, writing, return or other document obtained by him or on his behalf for the purposes of this Act to be given to,

- (a) a minister of the Government of Canada or any officer or employee employed under a minister of the Government of Canada for the purposes of administration of any Act of the Parliament of Canada imposing any tax or duty; or
- (b) a minister of the government of any province of Canada or officer or employee employed under that minister, for the purposes of administering and enforcing an Act of the Legislature of that province imposing any tax or duty,

if the minister of the Government of Canada or the minister of the government of another province, as the case may be, is permitted to give to the Minister information or copies of any book, record, writing, return or other document obtained by or on behalf of the minister of the Government of Canada, or the minister of the government of that other province, as the case may be, in the administration or enforcement of that Act for the purposes of the administration of this Act.

19. Where a disposition of or with respect to designated land occurs after the 9th day of April, 1974 and is the result of an agreement that is proved to the satisfaction of the Minister to have been reduced to writing and executed by the parties to it before the 10th day of April, 1974 and that has been filed with the Minister before the 16th day of May, 1974, no tax is payable under this Act by the transferor with respect to such disposition of designated land. Where no tax payable

20.—(1) The Minister may make regulations prescribing any form required by this Act or that, in his opinion, will assist in the administration of this Act, and prescribing how and by whom any form shall be completed and what information it shall contain. Regulations

(2) The Lieutenant Governor in Council may make Idem regulations,

- (a) exempting from tax any designated land or class of designated land or exempting from tax any designated land with respect to which any disposition or class of disposition occurs;
- (b) authorizing any person to grant, after an investigation of such matters as are specified, any exemption that may be given under clause *a*;

- (c) authorizing the refund of any tax and specifying the conditions upon which such refund may be made;
- (d) prescribing the evidence required to establish facts relevant to assessments under this Act;
- (e) requiring any class of persons to make information returns respecting any class of information required in connection with assessments under this Act;
- (f) requiring a person who is, by a regulation made under clause e, required to make an information return to supply a copy of the information return or of a prescribed portion thereof to the person or persons in respect of whose designated land the information return or portion thereof relates;
- (g) authorizing a designated officer or class of officers employed by the Government of Ontario to exercise powers or perform duties of the Minister under this Act;
- (h) prescribing any rate of interest that is to be prescribed;
- (i) providing for the payment of interest on any refund or on any payment of tax authorized by regulation, and prescribing the rate of such interest and the method by which it is to be calculated;
- (j) defining any word or expression used in this Act that has not already been expressly defined in this Act;
- (k) providing for relaxing the strictness of this Act relative to the incidence of tax hereunder in special circumstances where, without such relaxation, inconvenience or hardship might result or the development of designated land might be impeded;
- (l) that are considered necessary for the purpose of carrying into effect the provisions of this Act according to their intent and of supplying any deficiency therein.

Idem

- (3) A regulation is, if it so provides, effective with reference to a period before it was filed.

21. Upon receiving Royal Assent, this Act shall be deemed ^{Commencement} to have come into force on the 9th day of April, 1974 and to apply to every disposition made, tax imposed and everything that may be required to be done under this Act that is made, imposed or done after the 9th day of April, 1974.

22. This Act may be cited as *The Land Speculation Tax* ^{Short title} *Act, 1974.*

An Act to impose a Tax on speculative
Profits resulting from the Disposition of
Land

1st Reading

April 9th, 1974

2nd Reading

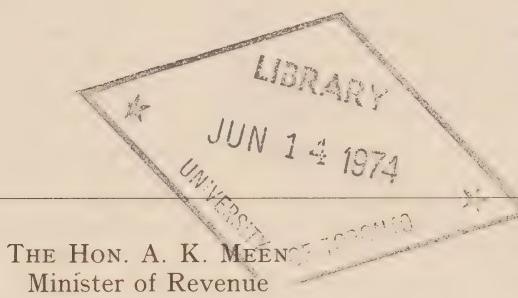
3rd Reading

THE HON. A. K. MEEN
Minister of Revenue

(*Government Bill*)

BILL 25

Government Bill

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974~~Legislative Assembly~~**An Act to impose a Tax on Land in respect of
certain speculative Transactions affecting the
Control or Ownership of Land**THE HON. A. K. MEENAN
Minister of Revenue

(Reprinted as amended by the Committee of the Whole House)

TORONTO

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EXPLANATORY NOTES

In accordance with the proposals contained in the Treasurer's Budget, this Bill imposes a tax on certain land in Ontario that is "designated land" within the meaning of the Bill. The rate of tax is 50 per cent of the increase in value of designated land after April 9, 1974, and is imposed only when the land is disposed of after that date. A change of control of a corporation or association of persons 50 per cent or more of whose assets consist of designated land will be treated as a disposition of the designated land occasioning tax unless entitled to exemption.

The person disposing of designated land is responsible for payment of the tax imposed on that land, and designated land does not include a mineral property that is a "Canadian resource property" under the *Income Tax Act* (Canada).

The Bill also provides that certain dispositions of designated land may be made tax free. These are: a person's principal residence or principal recreational property, transfers to the Crown or a Crown agency, transfers by or to a municipality or a charitable organization, expropriations of land, transfers of land used for industrial or commercial purposes, other than apartment buildings, that includes buildings and improvements worth at least 40 per cent of the property sold, land on which the owner has erected a building or on which there is a building that the owner has renovated if the building is worth at least 40 per cent of the value of the land and building, and farming land disposed of within the family to enable the transferee to carry on farming.

Where a person owns and rents out residential property that qualifies as an "investment property" in section 20 of the Bill, he is entitled to a reduction of 10 per cent of the taxable value of that property for each year that the property was an investment property before its disposition, but this reduction applies only when the property is disposed of after April 9, 1977.

Under the circumstances described in section 21 of the Bill, a subdivider may dispose of subdivided, serviced land to a builder who agrees to commence construction of buildings on the property so disposed of within nine months, as to 50 per cent of the land so disposed of, and within eighteen months, as to the balance of the property so disposed of. Where this agreement is made, the subdivider ceases to be responsible for payment of the tax resulting from the disposition, but the builder must assume responsibility for the tax until he complies with his agreement to commence construction. When he complies with the agreement, the tax is cancelled.

Section 22 of the Bill allows a person over age sixty-five to dispose of a property that was his principal residence for at least five years immediately prior to his ceasing to occupy it as his principal residence after attaining age sixty-five. The disposition is exempt from tax even though the property is not, at the time of the disposition, the transferor's principal residence, provided that it was his principal residence when he ceased to inhabit it after reaching age sixty-five, and provided that he is not ordinarily inhabiting as his principal residence another property that he or his spouse owns at the time of the disposition. This exemption is available only once to a transferor.

Where control of a corporation owning designated land changes hands, an additional tax is imposed on the land at the rate applicable to conveyances under *The Land Transfer Tax Act, 1974* where, after the disposition, the control is exercisable by a non-resident person within the meaning of that Act. The sale of shares in a land-owning corporation does not attract tax under that Act because no new registration of the land is required on the transfer of shares.



BILL 25**1974**

 **An Act to impose a Tax on Land in respect of certain speculative Transactions affecting the Control or Ownership of Land** 

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Interpre-
tation

- (a) “adjusted value” means, in the case of any particular disposition of designated land to which the expression is being applied, the aggregate of,
 - (i) where the designated land was acquired by the transferor after the 9th day of April, 1974,
 - (A) otherwise than as described in sub-subclause B, C or D, the cost to the transferor of its acquisition,
 - (B) under the will or on the intestacy of a person dying after the 9th day of April, 1974, the fair market value of the designated land at the death of such person,
 - (C) the fair market value of the designated land at the time it was so acquired if it was so acquired,
 - 1. by the transferor from a person or persons with whom the transferor was not dealing at arm’s length at the time the designated land was so acquired by him,
 - 2. by the transferor that is a corporation that so acquired the designated land in consideration of the allotment and issue of its shares,

- 3. by the transferor that is an organization, syndicate, association of persons, partnership, joint venture or corporation without share capital that so acquired the designated land in consideration of the admission to membership therein of any person, or
 - 4. by the transferor by way of gift,
[REDACTED]
- or
- (D) as the result of a disposition described in clause *h* of section 4, the adjusted value applicable to the designated land on the first disposition of it after the 9th day of April, 1974, that was a disposition described in clause *h* of section 4 and made by a transferor of whose family the subsequent transferor is a member,
 - (ii) where the designated land was acquired by the transferor on or before the 9th day of April, 1974, the fair market value of the designated land ascertained as at the 9th day of April, 1974,
 - (iii) the cost of improvements made by the transferor to the designated land after the 9th day of April, 1974,
 - (iv) for each twelve-month period that does not commence earlier than the 9th day of April, 1974 during which the transferor owns the designated land prior to his disposition of it, the lesser of either,
 - (A) 10 per cent of the amount determined under either subclause i or ii, whichever is applicable, or
 - (B) the aggregate of,
 - 1. the net maintenance costs incurred by the transferor after the 9th day of April, 1974 with respect to the designated land, and

2. the costs incurred by the transferor in connection with disposing of the designated land if it was acquired by him after the 9th day of April, 1974, or where it was acquired by him on or before that date, the proportion of the costs incurred by the transferor in connection with disposing of the designated land that is in the same ratio to the whole of such costs as the fair market value of the designated land at the 9th day of April, 1974 is of the proceeds of disposition of the designated land by the transferor,

and

- (v) in the case of a disposition of designated land used in farming and to which clause *h* of section 4 does not apply, an amount equal to compound interest at the rate of 10 per cent per annum calculated with annual rests upon the amount determined under subclause i or ii, whichever is applicable to the transferor, for the number of years preceding the disposition and not including any period of time prior to the 9th day of April, 1974 throughout which farming was carried on on the designated land by the transferor making the disposition to which clause *h* of section 4 does not apply, or by any previous transferor of whose family the transferor making the disposition to which clause *h* of section 4 does not apply was a member, or by members of the family of such previous transferor, or by a farming corporation to which a disposition by such previous transferor would be a disposition described in clause *h* of section 4;
- (b) "designated land" means all land situate in Ontario and every right, estate, interest, tenement or hereditament existing at law or in equity in, over, to, or affecting land or capable of being registered in any land registry office in Ontario, fixtures, and buildings or structures attached to land, whether or not owned by persons other than the owner of the freehold of the land to which they are attached,

but "designated land" does not include any land in Ontario that is, within the meaning of paragraph *c* of subsection 15 of section 66 of the *Income Tax Act* (Canada), "Canadian resource property", or an interest held in land solely as security for some indebtedness secured by the land;

(c) "dispose", "disposed of", and expressions of like import when used with reference to designated land, mean a disposition which has or is deemed to have occurred with respect to designated land;

(d) "disposition" includes,

(i) a sale or transfer, however effected, of any part of the beneficial interest in designated land,

 (ii) the sale, transfer, or assignment of an option providing for the acquisition of designated land, or the transfer of designated land made to comply with the terms of any such option that has been exercised, 

(iii) the entering into a lease or similar arrangement of any kind with respect to designated land where the term of the lease or arrangement, including any renewals or extensions thereof, may exceed ten years, and the sale, assignment or transfer of the rights under any such lease or arrangement exercisable by the lessee or in the case of an arrangement similar to a lease, by the person in a position similar to that of the lessee,

(iv) any change in the entitlement to, or any accretion to, the beneficial interest in designated land as a result of the death of any person,

 (v) any change in the composition of, the membership of, or the persons beneficially interested in any organization, syndicate, association of persons, partnership, joint venture or corporation without share capital, 50 per cent or more of the assets of which consist of designated land, if the effect of such change is that control over the use of the designated land or the proceeds of its disposition or of a subsequent disposition is exercisable in fact by a different person or group of persons, 

- (vi) the sale or transfer in any manner of the beneficial interest in, or the allotment and issue of, shares to which are attached 50 per cent or more of the voting rights ordinarily exercisable at meetings of the shareholders of the corporation and that are shares in the capital stock of a corporation 50 per cent or more of the assets of which consist of designated land, or
- (vii) the amalgamation, merger, consolidation or any other like arrangement of any two or more corporations, 50 per cent or more of the assets of any one of which consist of designated land, that has the effect of making control over the use of the designated land or the proceeds of its disposition or of a subsequent disposition exercisable in fact, and whether directly or indirectly, by a different person or group of persons,

but for greater certainty "disposition" does not include any transfer of property for the purpose only of securing a debt or a loan, or any transfer by a creditor for the purpose only of returning property that had been used as security for a debt or a loan, or any transfer of property by virtue of which there is a change in the legal ownership of the property without any change in the beneficial ownership thereof;

- (e) "farming" includes tillage of the soil, the breeding, raising or grazing of live stock of all kinds, the raising of poultry and the production of poultry products, fur farming, dairy farming, fruit growing, the growing of food for human consumption or for the feeding of live stock, and the keeping of bees;

- (f) "farming corporation" means a corporation,

- (i) every share of which that confers on the holder thereof the right to vote is, at the date of any disposition with respect to which the expression is being applied, owned either by the transferor making the disposition or by a member of his family, and

- (ii) 95 per cent of the assets of which are "farming assets" within the meaning of section 17a of *The Succession Duty Act*;

R.S.O. 1970.
c. 449

(g) "member of the family" means grandparents, parents, uncles, aunts, the spouse, brothers, sisters, children, grandchildren, nephews, nieces, sons-in-law, daughters-in-law, mother-in-law or father-in-law of a person with respect to whom the expression is being applied;

(h) "Minister" means the Minister of Revenue;

(i) "municipality" includes a district, regional or metropolitan municipality, a local board, as defined in *The Municipal Affairs Act*, of any municipality, and an elementary or secondary school board or board of education having jurisdiction in territory without municipal organization;

(j) "net maintenance costs" means all costs, including interest payments and property taxes, incurred in connection with the maintenance of the designated land to which the expression is being applied, other than costs incurred in connection with the disposition of designated land, and after deducting any income howsoever earned by the transferor from the designated land, including income from his own use of the designated land or from the granting of any right or interest therein, but no deduction shall be made with respect to income earned from farming the designated land by a farmer who is carrying on farming thereon and whose chief source of income is from farming and who owns the designated land;

(k) "prescribed" means prescribed by regulation;

(l) "proceeds of disposition" means,

(i) the gross sale price or any other consideration given for the disposition of designated land or received by the transferor of designated land, the assumption, undertaking, extinguishment or release of any liability of the transferor or affecting designated land disposed of, and the value of any benefit of whatsoever kind conferred on the transferor or on some person at the direction of the transferor as part of the arrangement relating to the disposition of designated land,

~~(ii)~~ where designated land is transferred to comply with the terms of an option that provides for the acquisition of the designated land and that has been exercised, the value

of the consideration given for the granting of the option, plus the value of the cost provided for in the option of acquiring the designated land upon the exercise of the option, or

- (iii) an amount equal to the fair market value of the designated land disposed of where the disposition is,
 - (A) by a transferor to a person or persons with whom the transferor is not dealing at arm's length at the time of the disposition,
 - (B) to a corporation in consideration of the allotment and issue of its shares,
 - (C) to an organization, syndicate, association of persons, partnership, joint venture or corporation without share capital in consideration of the admission to membership therein of any person, or
 - (D) by way of gift,



but no proceeds of disposition arise on a disposition under the last will and testament of any person or on the intestacy of any person;

- (m) "regulation" means a regulation made under this Act;
- (n) "tax" unless expressly otherwise restricted, means the taxes imposed by this Act and the interest payable thereon;
- (o) "taxable value" when used in relation to designated land means the amount by which the proceeds of disposition of designated land exceed the adjusted value of that designated land at the time of its disposition, and the taxable value of designated land shall be computed separately for each disposition of designated land;

(p) "transferor" means,

- (i) except as provided in subclause ii, iii or iv, the person or persons who make or

effect any disposition with respect to designated land with respect to which the expression "transferor" is being applied,

- (ii) in the case of the disposition of any beneficial interest in designated land held in trust, the person or persons who is or are, immediately prior to the making of such disposition, entitled under the trust to have the designated land or the proceeds of its sale held for his or their benefit, or if no such person can be identified, every person who is a beneficiary under a trust extending to designated land the beneficial interest in which is disposed of,
- (iii) in the case of a disposition described in subclause iv of clause *d*, the person or persons who is or are, immediately after the disposition, beneficially interested in the designated land with respect to which such disposition has occurred, or
- (iv) in the case of a disposition described in subclause v, vi or vii of clause *d*, the person or persons who is or are, immediately prior to the occurrence of such disposition, beneficially interested in the designated land with respect to which such disposition has occurred,

and every disposition of or with respect to designated land shall be deemed to be made by the person or persons by this clause defined to be a "transferor" with respect to the disposition; 

- (q) "Treasurer" means the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs.

Idem
1970-71.
c. 63 (Can.)

- (2) Persons who, for the purposes of the *Income Tax Act* (Canada), would not be considered as dealing at arm's length shall not be considered to deal at arm's length for the purposes of this Act.

Idem

- (3) For the purpose of this Act, "disposition" includes any arrangement or ordering in the nature of a disposition, whether by one transaction or a number of transactions effected for the purpose, that in any manner effectively changes the identity of the persons who are entitled in fact or in law to control or derive a profit from designated land or its disposition.

(4) For greater certainty, it is declared that where a disposition described in subclause v, vi or vii of clause d of subsection 1 occurs, it is deemed to be a disposition of or with respect to any designated land referred to in that one of the said subclauses that describes the disposition that has occurred.

(5) For the purpose of this Act, "control" means control by another corporation, individual or trust that is in fact exercising effective control either directly or indirectly and either through the holding of shares of the corporation or of any other corporation or through the holding of a significant portion of any class of shares of the corporation or of the outstanding debt of the corporation or of any shareholder or member of the corporation, or by any other means whether of a like or different nature.

(6) Where designated land is disposed of by a corporation, 50 per cent or more of the assets of which consist of designated land, to its shareholders as a part of the winding up or dissolution of the corporation, the adjusted value of the designated land on the first subsequent disposition of it by such shareholders shall be computed as though the corporation, whether or not then in existence, and such shareholders were the same person.

(7) Where, on the disposition of any designated land, the adjusted value applicable to the designated land disposed of is determinable or ascertainable by reference to a larger amount of designated land of which that being disposed of is only a part, the adjusted value applicable to the designated land being disposed of shall be apportioned in such reasonable manner as will reflect the proportional value that the designated land disposed of is to the value of the larger amount of designated land.

(8) For the purpose of subclause iv of clause a of subsection 1, where the number of months (excluding any period of time prior to the 9th day of April, 1974) during which the transferor owned the designated land prior to his disposition of it exceeds the largest number of such months that is exactly divisible by twelve,

- (a) sub-subclause A of the said subclause iv applies to such excess number of months as though the number ten appearing in sub-subclause A were that number that is in the same ratio to ten as the number of such excess months is to twelve; and
- (b) paragraph 1 of sub-subclause B of the said subclause iv applies to include net maintenance costs incurred

by the transferor during such excess number of months.

Application of Act to certain dispositions

(9) For the purposes of clause *a*, *l* or *o* of subsection 1, or of subsection 8, where after the 9th day of April, 1974, a disposition described in subclause *v*, *vi* or *vii* of clause *d* of subsection 1 occurs of or with respect to designated land, the person or persons who is or are, immediately prior to the occurrence of such disposition, beneficially interested in the designated land with respect to which such disposition has occurred, shall be deemed to have disposed of it for proceeds of disposition equal to the amount of the fair market value of the designated land at the time of such disposition, and the person or persons who is or are, immediately following the occurrence of such disposition, beneficially interested in the designated land with respect to which such disposition has occurred, shall be deemed to have acquired the designated land for an amount equal to the amount of its fair market value at the time of such disposition, and for the purpose of determining the adjusted value of the designated land on the occurrence of the next subsequent disposition of it, subsection 8 and subclauses *iii*, *iv* and, where applicable, *v* of clause *a* of subsection 1 apply only to the period ending at the time of the next subsequent disposition of it and commencing at the time when the transferor making such next subsequent disposition was last deemed to have acquired the designated land.

Tax on designated land

2.—(1) Subject to section 4, where, after the 9th day of April, 1974, any disposition of designated land occurs, there shall be imposed and levied, for the uses of Her Majesty in right of Ontario, upon the designated land with respect to which such disposition occurs a tax computed at the rate of 50 per cent of the taxable value of designated land with respect to which such disposition occurs.

Idem

(2) Where there is a disposition within the meaning of subclause *vi* or *vii* of clause *d* of subsection 1 of section 1 of any designated land and the result of the disposition is that control of the corporation beneficially interested in the designated land is exercisable by a person or a group of persons different from those by whom control of the corporation was exercisable before the disposition, there shall be imposed and levied, for the uses of Her Majesty in right of Ontario, upon the designated land a tax, in addition to the tax imposed by subsection 1, calculated on the proceeds of disposition and computed at the rate of 20 per cent of the proceeds of disposition where the corporation beneficially interested in the designated land is, immediately after the disposition

has occurred, a non-resident corporation as defined in
The Land Transfer Tax Act, 1974.

1974, c. 8

(3) The tax is payable by the transferor of any designated land disposed of by him and shall be paid at the time of the disposition of the designated land, and if not then paid, the tax bears interest at the rate of 9 per cent per annum until a different rate is prescribed. ^{Payment of tax}

(4) The tax is payable to the Treasurer and shall be remitted ^{Idem} to the Minister by the person responsible for its payment.

3.—(1) An administrator, executor, trustee or person acting in a fiduciary capacity for the transferor of designated land that is disposed of is not, as such, personally liable for the tax, but no person in Ontario shall pay, deliver, assign or transfer to or for the benefit of the transferor or of any person at the direction of the transferor any money or property coming into his hands as administrator, executor, trustee or person acting in a fiduciary capacity and by reason of the disposition of designated land without deducting therefrom or collecting an amount sufficient to pay the tax on the designated land disposed of. ^{Trustees not personally liable}

(2) Every such administrator, executor, trustee or person acting in a fiduciary capacity for the transferor who, knowing that tax is payable, makes or permits any payment, delivery, assignment or transfer referred to in subsection 1 without deducting or collecting an amount sufficient to secure the tax is guilty of an offence and on summary conviction is liable to pay to the Treasurer as a penalty an amount equal to 150 per cent of the amount of such tax. ^{Penalty}

(3) An administrator, executor, trustee or person acting in a fiduciary capacity for the transferor who has deducted or collected any money on account of the tax shall remit it to the Minister and is deemed to be a person who has received money for the Crown or for which he is accountable to the Crown within the meaning of *The Financial Administration Act*. ^{Tax held by trustee R.S.O. 1970, c. 166}

4. No designated land is liable to the tax imposed by Exemptions subsection 1 of section 2,

 (a) when the designated land is disposed of by, or by way of gift to, an organization that is, at the time of the disposition, a "registered Canadian charitable organization" within the meaning of paragraph *c* of subsection 8 of section 110 of the *Income Tax Act* (Canada) and is not a trust ^{1970-71, c. 63(Can.)}

exempt from tax under Part I of that Act by paragraph *f* or *h* of subsection 1 of section 149 of that Act;

- (b) when the designated land is disposed of by a municipality;
- (c) when the designated land is disposed of by a corporation, 50 per cent or more of the assets of which consist of designated land, to its shareholders as part of the winding up or dissolution of the corporation;
- (d) when the designated land disposed of is, at the time of its disposition, predominantly used as a tourist resort of a class, kind or designation prescribed by the Minister by regulation, or for commercial or industrial purposes, other than the rental of apartment suites or residential accommodation for use as the principal residence of the lessee, and if the designated land so disposed of contains buildings, structures or other capital improvements, excluding any costs or value attributable to subdividing and servicing the designated land, that have a value, at the time of the disposition, equal to 40 per cent or more of the proceeds of disposition of the designated land;
- (e) when the designated land disposed of is the principal residence of the transferor ordinarily inhabited by him or by him and his spouse, children or other dependants, together with land subjacent to the principal residence and land immediately contiguous to such subjacent land to the extent that such subjacent land and the immediately contiguous land do not exceed ten acres, but where only part of the designated land disposed of is ordinarily inhabited by the transferor or by him and his spouse, children or other dependants as his principal residence, the exemption conferred by this clause applies only to the proportion of the taxable value on such disposition that is in the same ratio to the whole of such taxable value as that part of any building that is ordinarily inhabited by the transferor or by him and his spouse, children or other dependants as his principal residence is of the whole of the building or buildings included in the designated land so disposed of;
- (f) when the designated land disposed of is not designated land described in clause *e* or is not immediately

contiguous thereto, and is used by the transferor or by members of his family for his or their personal recreation and enjoyment and is his principal recreational property, but this clause does not apply to any part of such designated land so disposed of in excess of twenty acres or where the disposition is to a non-resident person as defined in *The Land Transfer Tax Act, 1974*^{1974, c. 8};

- (g) when the designated land disposed of includes a building or structure,

- (i) that the transferor has constructed or caused to be constructed, or
- (ii) that the transferor has renovated or caused to be renovated at a cost of not less than 20 per cent of,

(A) where the designated land was acquired by him after the 9th day of April, 1974, the cost to him of his acquisition of the designated land or the fair market value of the designated land at the time of its acquisition by the transferor if such fair market value is greater than the cost of acquisition, or

(B) where the designated land was acquired by the transferor on or before the 9th day of April, 1974, its fair market value ascertained as at the 9th day of April, 1974,

and that has a value at the time of the disposition of the designated land of not less than 40 per cent of the total proceeds of disposition of the designated land;

- (h) when the designated land disposed of is, at the time of its disposition, used by the transferor, by members of the family of the transferor, by a farming corporation, or by the transferor and members of his family in farming, and the disposition of such designated land is to a member or members of the family of the transferor or to a farming corporation for the purpose of enabling the person to whom the disposition is made to carry on farming on the designated land;

- ~~(i)~~ when the designated land is taken under statutory authority or is sold to a person by whom notice of an intention to take it under statutory authority was given; or

(j) when the designated land is disposed of to Her Majesty in right of Ontario, a Crown agency within the meaning of *The Crown Agency Act*, a municipality, Ontario Hydro, Her Majesty in right of Canada, or to an agent of Her Majesty in right of Canada.

Special
lien
conferred

5.—(1) Every tax imposed upon designated land by this Act is, until paid, a special lien in favour of Her Majesty in right of Ontario upon the designated land and has complete priority over every claim, privilege, lien, encumbrance, right, title or interest of any person that arose or came into existence as part of or subsequent to the disposition of the designated land as a result of which tax was imposed on the designated land, and such special lien has priority over every execution in the hands of any sheriff or other officer that affects the designated land, whether the designated land was subject to the execution before or after the disposition of the designated land.

Where
no lien
attaches

(2) The special lien conferred by this Act does not attach to any designated land disposed of where the Minister has given his certificate that no lien is claimed with respect to the designated land, but the giving of the certificate does not destroy the special lien for tax resulting from any disposition of designated land occurring after the date as of which the certificate is given, and the giving of the certificate does not impair or relieve the transferor from his responsibility to pay any tax imposed by this Act.

Idem

(3) Where designated land is disposed of and, in order to recognize or give effect to the disposition, it is necessary to register upon the title to the designated land disposed of an instrument or writing under the registry system or land titles system, the special lien conferred by this Act does not attach to the designated land in respect of such disposition if there is attached to or made part of such instrument or writing, at the time it is tendered to a land registrar for registration, the affidavit of the transferor, or of some individual authorized in writing by the transferor to make such affidavit, stating that the disposition of designated land evidenced in the instrument or writing attached to such affidavit or of which the affidavit is a part is a disposition described in a clause and, where applicable, a subclause (which clause and subclause shall be expressly named in the affidavit) of section 4 of this Act, but the making of such affidavit does not impair or relieve the transferor from his responsibility to pay any tax imposed by this Act.

Notice of
intended
sale

(4) Before the issue of a warrant under subsection 5, the Minister shall send by mail or by registered mail, or deliver by personal service, a notice to all persons who have an

interest, encumbrance or charge registered under the land titles system or the registry system against the designated land for the sale of which the warrant is to be issued that he intends to have the designated land that is subject to the special lien conferred by this Act sold pursuant to subsection 5, and such notice shall be given not less than thirty days or more than sixty days before the issue of the warrant, and shall be sent, in the case of a notice sent by mail, to the latest known address of each person to whom notice is to be given and to such other address as, in the opinion of the Minister, may be more likely to bring the notice to the person's attention.

(5) Subject to subsection 4, the Minister may, by his warrant directed to the sheriff of the county, district or judicial district in which is situate any designated land that is subject to the special lien conferred by this Act, require the sheriff to sell the designated land within six months or such longer period as is stated in the warrant, and the sheriff, upon receiving the warrant, shall proceed within the period specified to sell the land in the same manner as for a sale under a writ of execution issued out of the Supreme Court, and any person purchasing from the sheriff at such a sale shall take good title to the designated land free and clear of all encumbrances and claims of any kind of all persons whatsoever that do not have priority over the special lien but subject to all the rights and encumbrances of persons who have an interest in the designated land that have priority over the special lien.

(6) The proceeds of sale received by the sheriff from a sale under a warrant authorized by subsection 5 shall be applied first to pay the costs and expenses of the sheriff in conducting the sale and next in payment of the amount of tax that was a special lien on the designated land conferred by this Act, and any surplus thereafter remaining shall be paid, in order of their priorities, to those whose rights in the designated land were subject to the special lien, and, if the order of those priorities cannot be established by the sheriff, shall be paid into court to be dealt with as the court shall direct.

(7) At any time prior to a sale authorized by subsection 5, any person interested in the designated land affected by the special lien conferred by this Act may pay to the Minister a sum sufficient to discharge the special lien, and if the special lien is discharged by some person having an encumbrance against the designated land, the amount accepted by the Minister may be added to that person's encumbrance and shall, for all purposes and in every court, thereafter be treated as part of the encumbrance and shall bear interest at the rate provided for in the encumbrance and shall be collectable in the same way as the encumbrance is enforceable.

Waiver of lien (8) Upon such conditions as he may impose, the Minister may abandon, postpone, release or waive with respect to all or any part of any designated land any special lien conferred by this Act.

Avoidance **6.** Where the result of one or more sales, exchanges, declarations of trust, or other transactions of any kind whatever is that a transferor has disposed of property under circumstances such that he may reasonably be considered to have artificially or unduly reduced the amount of the taxable value of designated land that he has disposed of, the taxable value shall be computed as if such reduction had not occurred.

Refund **7.** Where a person has paid an amount under this Act as tax that is not payable as tax under this Act, the Minister may, upon receipt of satisfactory evidence that the amount was wrongly paid, authorize the Treasurer to refund such amount or any part thereof, but no refund shall be made unless it is applied for within three years after the date of the payment of any amount that is alleged not to have been payable as tax under this Act.

Assessment **8.—(1)** Where any person responsible for the payment of tax fails to pay it as required under this Act, the Minister may make an assessment of the tax for which such person is responsible and which has not been paid.

Notice of assessment **(2)** Where the Minister has made an assessment under subsection 1, he shall send by mail or by registered mail or deliver by personal service a notice of assessment to the person so assessed, and the amount of the assessment shall be remitted to the Minister by the person so assessed within thirty days from the date of mailing or delivery of the notice of assessment.

Idem **(3)** Where the Minister has made an assessment under subsection 1, the notice of assessment may provide that the amount assessed is payable forthwith.

Assessment from time to time **(4)** The Minister may, at any time he considers reasonable, assess or reassess any tax payable by any person under this Act.

Assessment on inspection **(5)** Where it appears from an inspection, audit or examination of the books of account, records or documents of any person that this Act or the regulations have not been complied with, the person making the inspection, audit or examination shall calculate the tax payable in such manner and form and by such procedure as the Minister considers adequate and expedient, and the Minister shall assess the amount of the tax.

(6) The Minister shall send by mail or by registered mail Notice of assessment under subs.
or deliver by personal service a notice of the assessment made under subsection 4 or 5 to the person so assessed at his latest known address, and the notice may provide that the amount assessed is payable forthwith.

(7) Liability for tax is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

(8) The Minister is not bound by any information delivered by or on behalf of any person responsible for the payment of information the tax and may, notwithstanding any information that has been delivered or if no information has been delivered, assess the tax payable under this Act.

(9) An assessment, subject to being varied or vacated on Assessment valid and binding an objection or appeal and subject to a reassessment, shall be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto.

(10) The amount of any assessment is payable within the time required by the notice of assessment whether or not an objection or appeal from the assessment is made or taken.

9.—(1) Where a person objects to an assessment made under section 8, he may, within ninety days after the day of mailing or delivery by personal service of the notice of assessment, serve on the Minister a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts.

(2) A notice of objection under this section shall be served by being sent by registered mail addressed to the Minister.

(3) Upon receipt of a notice of objection, the Minister shall with all due despatch reconsider the assessment and vacate, confirm or vary the assessment or reassess, and he shall thereupon notify the person who has made the objection of his action by registered mail.

10.—(1) After the Minister has given the notification required by subsection 3 of section 9, a person who has served notice of objection under section 9 may appeal to the Supreme Court to have the assessment vacated or varied or reassessed, but no appeal under this section shall be instituted after the expiration of ninety days from the day on which notice has been mailed to such person under

subsection 3 of section 9, and an appeal under this section shall not be made to the Divisional Court.

Appeal, how instituted (2) An appeal to the Supreme Court shall be instituted by serving on the Minister a notice of appeal in duplicate in the prescribed form and by filing a copy thereof with the Registrar of the Supreme Court or with the Local Registrar of the Supreme Court for the county, district or judicial district in which is situate the designated land the tax imposed on which is under appeal.

Service (3) A notice of appeal shall be served on the Minister by being sent by registered mail addressed to the Minister.

Contents of notice of appeal (4) The person appealing shall set out in his notice of appeal a statement of the allegations of fact and the statutory provisions and reasons that he intends to submit in support of his appeal.

Reply to notice of appeal (5) After the service on him of a notice of appeal under this section, the Minister shall with all due despatch serve on the person appealing and file in the Supreme Court where the notice of appeal was filed a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such further allegations of fact and of such statutory provisions and reasons as he considers relevant.

Matter deemed action (6) Upon the filing in the Supreme Court of the material referred to in subsection 5, the matter shall be deemed to be an action in the court, and the practice and procedure of the court, including the right of appeal and the practice and procedure relating to appeals, apply to every matter that is deemed to be an action under this subsection, and every judgment and order given or made in every such action may be enforced in the same manner and by the like process as a judgment or order given or made in an action commenced in the court.

Disposition of appeal (7) The court may dispose of an appeal by allowing it, by dismissing it, or by allowing it in part and directing the Minister to vacate the assessment, vary the assessment or reconsider the assessment and reassess as indicated by the judgment of the court.

Idem (8) In delivering judgment disposing of an appeal, the court may order payment or refund of tax by the appellant or by the Treasurer, as the case may be, and may make such order as to cost as is considered proper.

Irregularities (9) No assessment shall be vacated or varied on appeal by reason only of an irregularity, informality, omission or

error on the part of any person in the observance of any directory provision of this Act.

(10) The time within which a notice of objection under subsection 1 of section 9 or a notice of appeal under subsection 1 of this section is to be served may be extended by the Minister if application for extension is made before expiration of the time for service of the notice of objection or notice of appeal, as the case may be.

11. Any payment to the Treasurer under this Act, other than a payment of penalties or fines imposed for offences under this Act, shall first be applied to any interest payable on any tax imposed by this Act.

12.—(1) Any person thereunto authorized by the Minister for any purpose related to the administration or enforcement of this Act may at all reasonable times enter into any premises where any business is carried on or any property is kept or anything is done in connection with any business or where any books or records are or should be kept, and may,

- (a) audit or examine the books, records, accounts, vouchers, letters, telegrams, or other documents that relate or may relate to any disposition of designated land or to the amount of tax payable under this Act;
- (b) examine any designated land disposed of or any property the value of which formed or may have formed part of the adjusted value or proceeds of disposition referable to any disposition of designated land, or any property, process or matter an examination of which may, in his opinion, assist him in determining the accuracy of any information that was or should have been furnished to the Minister or the amount of any tax payable under this Act;
- (c) require any transferor or any person to whom a disposition of designated land has been or may have been made or, if such transferor or person is a partnership or corporation, require a partner or the president, manager, secretary or any director, agent or representative thereof or any other person on the premises of such transferor or person to give him all reasonable assistance with his audit or examination and to answer all questions relating to the audit or examination either orally or, if he so requires, in writing, on oath or by statutory declaration, and for that purpose require such person to attend at the premises with him; and

(d) if during the course of an audit or examination it appears to him that there has been a contravention of this Act or the regulations, seize and take away any of the records, books, accounts, vouchers, letters, telegrams and other documents and retain them until they are produced in any court proceedings.

Idem (2) The Minister may, for any purpose related to the administration or enforcement of this Act, by registered letter or by a demand served personally, require from any transferor, or if such transferor is a partnership or corporation, from a partner or the president, manager, secretary or any director, agent or representative thereof,

- (a) any information concerning designated land or a disposition of designated land that is believed to have occurred; or
- (b) production, or production on oath, of any books, letters, accounts, invoices, statements, financial or otherwise, or other documents,

within such reasonable time as is stipulated therein.

Idem (3) The Minister may, for any purpose related to the administration or enforcement of this Act, by registered letter or by a demand served personally, require from any person, partnership, syndicate, trust or corporation holding any amount for or paying or liable to pay any amount to a transferor or to any person to whom a disposition of designated land has been or may have been made production, or production on oath, of any books, letters, accounts, invoices, statements, financial or otherwise, or other documents within such reasonable time as is stipulated therein.

Idem (4) The Minister may, for any purpose related to the administration or enforcement of this Act, with the approval of a judge of the Supreme Court, which approval the judge is hereby empowered to give upon *ex parte* application, authorize in writing an officer of the Ministry of Revenue, together with such members of the Ontario Provincial Police Force or other peace officers as he calls upon to assist him and such other persons as are named therein, to enter and search, if necessary by force, any building, receptacle or place for documents, books, records, papers or things that may afford evidence as to the contravention of any provision of this Act or the regulations and to seize and take away any such documents, books, records, papers or things and retain them until they are produced in any court proceedings.

Documents
to prove
tax
liability

(5) The Minister may, by registered letter or by a demand served personally, require the production under oath or

otherwise by any person, partnership, syndicate, trust or corporation, or by his or its agent or officer, of any letters, accounts, invoices, statements, financial or otherwise, books or other documents in the possession or in the control of such person, partnership, syndicate, trust or corporation or of his or its agent or officer for the purpose of determining what tax, if any, is imposed by this Act on designated land and what person is responsible for its payment, and production thereof shall be made within such reasonable time as is stipulated in such registered letter or demand.

(6) Where a book, record or other document has been seized, ^{Copies} examined or produced under this section, the person by whom it is seized or examined or to whom it is produced, or any officer of the Ministry of Revenue, may make or cause to be made one or more copies thereof, and a document purporting to be certified by the Minister or a person thereunto authorized by the Minister to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have had if it had been proved in the ordinary way.

(7) No person shall hinder or molest or interfere with ^{Compliance} any person doing anything that he is authorized by this section to do or shall prevent or attempt to prevent any person doing any such thing.

(8) Notwithstanding any other law to the contrary, every ^{Idem} person shall, unless he is unable to do so, do everything he is required by this section to do.

(9) Declarations or affidavits in connection with statements ^{Administration} _{of oaths} of information submitted pursuant to this section may be taken before any person having authority to administer an oath or before any person specially authorized for that purpose by the Lieutenant Governor in Council, but any person so specially authorized shall not charge any fee therefor.

13.—(1) Upon default of payment of any amount assessed ^{Recovery} _{of tax} under section 8,

(a) the Minister may bring an action for the recovery thereof in any court in which a debt or money demand of a similar amount may be collected, and every such action shall be brought and executed in and by the name of the Minister or his name of office and may be continued by his successor in office as if no change had occurred and shall be tried without a jury; and

(b) the Minister may issue a warrant directed to the sheriff of any county, district or judicial district in which any property of a person liable to make a

payment or remittance under this Act is located or situated for the amount of the tax owing by him, together with interest thereon from the date of the issue of the warrant and the costs and expenses of the sheriff, and such warrant has the same force and effect as a writ of execution issued out of the Supreme Court.

Compliance proved by affidavit

(2) For the purpose of any proceeding or prosecution taken or instituted under this Act, the facts necessary to establish compliance on the part of the Minister with this Act as well as the failure of any person to comply with the requirements of this Act shall, unless evidence to the contrary satisfactory to the court is adduced, be sufficiently proved in any court of law by affidavit of the Minister or of any officer of the Ministry of Revenue.

Remedies to recover tax

(3) The use of any of the remedies provided by this section does not bar or affect any of the other remedies therein provided, and the remedies provided by this Act for the recovery and enforcement of the payment of any tax are in addition to any other remedies existing by law, and no action or other proceeding taken in any way prejudices, limits or affects any lien, charge or priority existing under this Act or at law in favour of Her Majesty in right of Ontario.

Garnishment

14.—(1) When the Minister has knowledge or suspects that a person is or is about to become indebted or liable to make any payment to a person liable to make a payment or remittance under this Act, he may, by registered letter or by a letter served personally, require the first-named person to pay the moneys otherwise payable to the second-named person in whole or in part to the Treasurer on account of the liability under this Act.

Idem

(2) The receipt of the Treasurer for moneys paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

Liability of debtor

(3) Every person who has discharged any liability to a person liable to make a payment or remittance under this Act without complying with the requirements under this section is liable to pay to the Treasurer an amount equal to the liability discharged or the amount that he was required under this section to pay to the Treasurer, whichever is the lesser.

Service of garnishee

(4) Where a person who is or is about to become indebted or liable to make a payment to a person liable to make a payment or remittance under this Act carries on business under

a name or style other than his own name, the registered or other letter under subsection 1 may be addressed to the name or style under which he carries on business and in the case of personal service, shall be deemed to have been validly served if it has been left with an adult person employed at the place of business of the addressee.

(5) Where the persons who are or are about to become indebted or liable to make a payment to a person liable to make a payment or remittance under this Act carry on business in partnership, the registered or other letter under subsection 1 may be addressed to the partnership name and, in the case of personal service, shall be deemed to have been validly served if it has been served on one of the partners or left with an adult person employed at the place of business of the partnership.

(6) Subject to the provisions of *The Wages Act*, where the Minister has under this section required an employer to pay to the Treasurer on account of an employee's liability under this Act moneys otherwise payable by the employer to the employee as remuneration, the requirement is applicable to all future payments by the employer to the employee in respect of remuneration until the liability under this Act is satisfied and operates to require payments to the Treasurer out of each payment of remuneration of such amount as may be stipulated by the Minister in the registered letter or letter served personally.

15.—(1) Every person who recklessly or knowingly makes an affidavit provided for in subsection 3 of section 5 that is false in some material particular is guilty of an offence and on summary conviction is liable to a fine of not less than \$100 plus an amount that is not less than the tax imposed on the designated land by subsection 1 of section 2, as determined under subsection 3, and resulting from the disposition with respect to which the affidavit relates.

(2) Every person who is required to remit to the Minister the tax imposed by this Act and who fails to remit the tax is guilty of an offence and on summary conviction is liable to a fine of not less than \$100 and an additional amount of not less than the tax, as determined under subsection 3, that should have been remitted.

(3) The Minister shall determine the amount of the tax referred to in subsection 1 or 2 from such information as is available to him, and shall issue a certificate as to the amount, but except where the Minister considers that there has been deliberate evasion of this Act, he shall not take into account a period of more than three years in determining the amount of tax referred to in the certificate.

Idem (4) In any prosecution under subsection 1 or 2, a certificate that is signed or that purports to be signed by the Minister or Deputy Minister of Revenue and that states the amount of tax is *prima facie* evidence of the amount of tax referred to in subsection 1 or 2 and of the authority of the person giving or making the certificate without any proof of appointment or signature.

Information for more than one offence (5) Any information in respect of an offence under this Act may be for one or more than one offence, and no information, warrant, conviction or other proceeding in a prosecution under this Act is objectionable or insufficient by reason of the fact that it relates to two or more offences.

Tax not affected (6) Neither the application of any provision of this section nor the enforcement of any penalty under this Act suspends or affects any remedy for the recovery of any tax payable under this Act.

Offences **16.**—(1) Every person who contravenes section 12 is guilty of an offence and on summary conviction is liable to a fine of \$25 for each day during which the default continues.

Idem (2) Every person who contravenes any of the provisions of this Act or the regulations for which no other penalty is provided is guilty of an offence and on summary conviction is liable for a first offence to a fine of not less than \$25 and not more than \$200, and for any subsequent offence to a fine of not less than \$100 and not more than \$1,000.

Idem (3) Every person who has,

- (a) knowingly made, participated in, assented to or acquiesced in the making of false or deceptive statements required by or under this Act or the regulations;
- (b) to evade payment of a tax imposed by this Act, destroyed, altered, mutilated, secreted or otherwise disposed of any record, document or thing;
- (c) wilfully, in any manner, evaded or attempted to evade compliance with this Act or payment of tax imposed by this Act; or
- (d) conspired with any person to commit any offence described in clause *a*, *b* or *c*,

is guilty of an offence and on summary conviction, in addition to any penalty otherwise provided by this Act, is

liable to a fine of not less than \$200 and not more than an amount equal to double the amount of the tax that should have been remitted or that was sought to be evaded, or to imprisonment for a term of not more than two years, or to both.

(4) Any officer, director or agent of a corporation who ^{Idem} directed, authorized, assented to, acquiesced in or participated in the commission of any act which is an offence under this Act for which the corporation would be liable for prosecution is guilty of an offence and on summary conviction is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

17. An information in respect of an offence against this ^{Limitation} Act shall be laid within six years of the time when the matter of the information arose.

18.—(1) Except as authorized by this section, no person ^{Communication of information} employed by the Government of Ontario shall,

- (a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister for the purposes of this Act; or
- (b) knowingly allow any person to inspect or to have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.

(2) Notwithstanding any other Act, but subject to sub-^{Officials not compellable as witnesses} section 3, no person employed by the Government of Ontario shall be required, in connection with any legal proceedings,

- (a) to give evidence relating to any information obtained by or on behalf of the Minister for the purposes of this Act; or
- (b) to produce any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.

(3) Subsections 1 and 2 do not apply in respect of,

^{Exceptions for legal proceedings}

- (a) criminal proceedings under any Act of the Parliament of Canada; or
- (b) proceedings in respect of the trial of any person for an offence under an Act of the Legislature; or

(c) proceedings relating to the administration or enforcement of this Act or the collection or assessment of tax.

Exception
for internal
adminis-
tration

(4) A person employed by the Government of Ontario may, in the course of his duties in connection with the administration or enforcement of this Act,

- (a)* communicate or allow to be communicated to an official or authorized person employed by the Government of Ontario in the administration and enforcement of any laws relating to the raising of revenues for provincial purposes any information obtained by or on behalf of the Minister for the purposes of this Act; and
- (b)* allow an official or authorized person employed by the Government of Ontario in the administration or enforcement of any laws relating to the raising of revenues for provincial purposes to inspect or have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.

Exception
for objection
or appeals,
etc.

(5) Notwithstanding any other provision of this Act, the Minister may permit a copy of any book, record, writing, return or other document obtained by him or on his behalf for the purposes of this Act to be given to,

- (a)* the person from whom the book, record, writing, return or other document was obtained; or
- (b)* any person,
 - (i)* for the purposes of any objection or appeal that has been or may be taken by that person under this Act arising out of any assessment of tax, interest or penalties under this Act in connection with which the book, record, writing, return or other document was obtained, or
 - (ii)* by whom any amount payable under this Act is payable or has been paid,

or the legal representative of any person mentioned in clause *a* or *b* or the agent of any such person authorized in writing in that behalf.

Exception
for tax
enforcement
in other
jurisdictions

(6) Notwithstanding any other provision of this Act, the Minister may permit information or a copy of any book,

record, writing, return or other document obtained by him or on his behalf for the purposes of this Act to be given to,

- (a) a minister of the Government of Canada or any officer or employee employed under a minister of the Government of Canada for the purposes of administration of any Act of the Parliament of Canada imposing any tax or duty; or
- (b) a minister of the government of any province of Canada or officer or employee employed under that minister, for the purposes of administering and enforcing an Act of the Legislature of that province imposing any tax or duty,

if the minister of the Government of Canada or the minister of the government of another province, as the case may be, is permitted to give to the Minister information or copies of any book, record, writing, return or other document obtained by or on behalf of the minister of the Government of Canada, or the minister of the government of that other province, as the case may be, in the administration or enforcement of that Act for the purposes of the administration of this Act.



19. Where it is established to the satisfaction of the Minister that, prior to the 10th day of April, 1974, there existed a written agreement providing for the disposition of designated land either,

- (a) at a definite price or consideration the amount or value of which is set out in the agreement and is not determinable or fixed by reference to any date or period of time after the 9th day of April, 1974; or
- (b) at a price or consideration the amount or value of which is determinable under the agreement by reference only to a valuation to be made as of a date not later than the 9th day of April, 1974,

no tax is payable under this Act by the transferor with respect to such disposition of designated land.

20.—(1) In this section, “investment property” means designated land that includes buildings that are (except as defined for any part thereof ordinarily inhabited by the owner thereof as his principal residence) predominantly rented to be ordinarily inhabited by the tenant or occupant as his

principal residence, and that have a value of not less than 40 per cent of the fair market value of the designated land, including such buildings.

**Invest-
ment
property
reduction**

(2) Where, after the 9th day of April, 1977, designated land that is an investment property is disposed of and, during the three years immediately preceding such disposition, no other disposition of or with respect to that designated land has occurred and the designated land has, during the three years immediately preceding such disposition, been an investment property of the transferor, the taxable value, computed as if this section was not applicable, of the investment property so disposed of shall be reduced by an amount equal to three-tenths of such taxable value plus one-tenth thereof for each full year (commencing on or after the 9th day of April, 1974) in excess of three years during which the investment property disposed of was an investment property owned by the transferor and during which no previous disposition of or with respect thereto occurred.

**Liability
for tax
on
subdivided
land**

21.—(1) Notwithstanding any other provision of this Act, where designated land is disposed of by a transferor who has, prior to the disposition and in accordance with the requirements of a subdivision agreement between a municipality and the transferor and enforceable against the transferor, subdivided and serviced the designated land disposed of by him, and where, prior to or as part of the disposition, the transferor has entered into an agreement under seal with the person (hereinafter in this section called the "agreeing person") to whom the designated land is disposed of, and that agreement contains a covenant by the agreeing person that he assumes the liability of the transferor for the tax imposed by subsection 1 of section 2 upon the designated land so disposed of and a covenant that the agreeing person will, within the nine months immediately following the disposition, commence construction of buildings on at least 50 per cent of the building sites or lots included in the designated land disposed of to him and will, within the eighteen months immediately following the disposition, commence construction of buildings on the remainder of the building sites or lots included in the designated land disposed of to him, the tax imposed by subsection 1 of section 2 with respect to the disposition to the agreeing person and for which he has covenanted to be liable is, subject to subsection 4, payable by the agreeing person immediately upon his failure to comply with the covenant to commence construction of buildings required by this subsection, and the tax is recoverable and collectable by the Minister in

the same manner and with all the rights and remedies provided by this Act as if the agreeing person were the transferor making such disposition, and where an agreement described in this subsection is made between the transferor and an agreeing person, the transferor disposing of designated land to the agreeing person is not liable for the payment of the tax imposed by subsection 1 of section 2 with respect to such disposition.

(2) The tax that an agreeing person is liable to pay under subsection 1 remains a special lien conferred by section 5 on the designated land disposed of, but the special lien shall not have priority over any mortgage or charge given by the agreeing person with respect to the designated land disposed of to him in accordance with subsection 1 that is given for the purpose of securing the advance of money borrowed for the purpose of constructing upon the designated land any building that the agreeing person has covenanted in accordance with subsection 1 to construct.

(3) Where, subject to subsection 4, the covenants required by subsection 1 to be contained in an agreement made by the agreeing person have been complied with, the tax imposed by subsection 1 of section 2 with respect to the disposition to the agreeing person and for which he covenanted to be liable is cancelled, but such cancellation does not affect in any way any liability of the agreeing person to pay tax on any disposition by him of designated land, including the designated land acquired by him under his agreement with the transferor made in accordance with subsection 1.

(4) Where the Minister is satisfied that special circumstances resulting in undue hardship for an agreeing person in complying with his covenant to commence construction of buildings in accordance with subsection 1 have occurred, he may extend any time referred to in subsection 1 within which an agreeing person is required to comply with a covenant to commence construction of buildings, and upon such extension being granted, an agreeing person's liability to pay tax shall not arise until the expiration of the extended time without the covenant having been complied with.

22. Notwithstanding any other provision of this Act, where a transferor who has not previously disposed of designated land exempt in whole or in part under this section disposes of designated land that was his principal residence for a period of five consecutive years prior to his ceasing

Exemption
for dis-
position
of former
residence
of person
over age
65

ordinarily to inhabit the designated land as his principal residence, and where, at the time he ceased ordinarily to inhabit the designated land as his principal residence, the transferor was sixty-five years of age or older, and where, at the time of the disposition the transferor is ordinarily inhabiting as his principal residence premises that are not owned in whole or in part by him or his spouse or by both of them, the designated land so disposed of is exempt from the tax imposed by subsection 1 of section 2 to the extent that the designated land would have been exempt by virtue of clause *e* of section 4 had the transferor disposed of the designated land at the time he ceased ordinarily to inhabit it as his principal residence and had clause *e* of section 4 then been applicable to the disposition.



Regulations

23.—(1) The Minister may make regulations prescribing any form required by this Act or that, in his opinion, will assist in the administration of this Act, and prescribing how and by whom any form shall be completed and what information it shall contain.

Idem

(2) The Lieutenant Governor in Council may make regulations,

- (a) exempting from tax any designated land or class of designated land or exempting from tax any designated land with respect to which any disposition or class of disposition occurs;
- (b) authorizing any person to grant, after an investigation of such matters as are specified, any exemption that may be given under clause *a*;
- (c) authorizing the refund of any tax and specifying the conditions upon which such refund may be made;
- (d) prescribing the evidence required to establish facts relevant to assessments under this Act;
- (e) requiring any class of persons to make information returns respecting any class of information required in connection with assessments under this Act;
- (f) requiring a person who is, by a regulation made under clause *e*, required to make an information return to supply a copy of the information return or of a prescribed portion thereof to the person or persons in respect of whose designated land the information return or portion thereof relates;

- (g) authorizing a designated officer or class of officers employed by the Government of Ontario to exercise powers or perform duties of the Minister under this Act;
- (h) prescribing any rate of interest that is to be prescribed;
- (i) providing for the payment of interest on any refund or on any payment of tax authorized by regulation, and prescribing the rate of such interest and the method by which it is to be calculated;
- (j) defining any word or expression used in this Act that has not already been expressly defined in this Act;
- (k) providing for relaxing the strictness of this Act relative to the incidence of tax hereunder in special circumstances where, without such relaxation, inconvenience or hardship might result or the development of designated land might be impeded;
- (l) that are considered necessary for the purpose of carrying into effect the provisions of this Act according to their intent and of supplying any deficiency therein.

(3) A regulation is, if it so provides, effective with reference ^{Idem} to a period before it was filed.

24. Upon receiving Royal Assent, this Act shall be deemed ^{Commencement} to have come into force on the 9th day of April, 1974 and to apply to every disposition made, tax imposed and everything that may be required to be done under this Act that is made, imposed or done after the 9th day of April, 1974.

25. This Act may be cited as *The Land Speculation Tax Act, 1974.* ^{Short title}

An Act to impose a Tax on Land in
respect of certain speculative Transactions
affecting the Control or Ownership of Land



1st Reading

April 9th, 1974

2nd Reading

May 6th, 1974

3rd Reading

THE HON. A. K. MEEN
Minister of Revenue

(Reprinted as amended by the
Committee of the Whole House)

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23 ELIZABETH II, 1974

Legislative Assembly

**An Act to impose a Tax on Land in respect of
certain speculative Transactions affecting the
Control or Ownership of Land**



THE HON. A. K. MEEN
Minister of Revenue

TORONTO

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BILL 25**1974**

An Act to impose a Tax on Land in respect of certain speculative Transactions affecting the Control or Ownership of Land

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Interpre-
tation

(a) “adjusted value” means, in the case of any particular disposition of designated land to which the expression is being applied, the aggregate of,

- (i) where the designated land was acquired by the transferor after the 9th day of April, 1974,
 - (A) otherwise than as described in sub-subclause B, C or D, the cost to the transferor of its acquisition,
 - (B) under the will or on the intestacy of a person dying after the 9th day of April, 1974, the fair market value of the designated land at the death of such person,
 - (C) the fair market value of the designated land at the time it was so acquired if it was so acquired,
 - 1. by the transferor from a person or persons with whom the transferor was not dealing at arm’s length at the time the designated land was so acquired by him,
 - 2. by the transferor that is a corporation that so acquired the designated land in consideration of the allotment and issue of its shares,

3. by the transferor that is an organization, syndicate, association of persons, partnership, joint venture or corporation without share capital that so acquired the designated land in consideration of the admission to membership therein of any person, or

4. by the transferor by way of gift,

or

(D) as the result of a disposition described in clause *h* of section 4, the adjusted value applicable to the designated land on the first disposition of it after the 9th day of April, 1974, that was a disposition described in clause *h* of section 4 and made by a transferor of whose family the subsequent transferor is a member,

(ii) where the designated land was acquired by the transferor on or before the 9th day of April, 1974, the fair market value of the designated land ascertained as at the 9th day of April, 1974,

(iii) the cost of improvements made by the transferor to the designated land after the 9th day of April, 1974,

(iv) for each twelve-month period that does not commence earlier than the 9th day of April, 1974 during which the transferor owns the designated land prior to his disposition of it, the lesser of either,

(A) 10 per cent of the amount determined under either subclause i or ii, whichever is applicable, or

(B) the aggregate of,

1. the net maintenance costs incurred by the transferor after the 9th day of April, 1974 with respect to the designated land, and

2. the costs incurred by the transferor in connection with disposing of the designated land if it was acquired by him after the 9th day of April, 1974, or where it was acquired by him on or before that date, the proportion of the costs incurred by the transferor in connection with disposing of the designated land that is in the same ratio to the whole of such costs as the fair market value of the designated land at the 9th day of April, 1974 is of the proceeds of disposition of the designated land by the transferor,

and

- (v) in the case of a disposition of designated land used in farming and to which clause *h* of section 4 does not apply, an amount equal to compound interest at the rate of 10 per cent per annum calculated with annual rests upon the amount determined under subclause i or ii, whichever is applicable to the transferor, for the number of years preceding the disposition and not including any period of time prior to the 9th day of April, 1974 throughout which farming was carried on on the designated land by the transferor making the disposition to which clause *h* of section 4 does not apply, or by any previous transferor of whose family the transferor making the disposition to which clause *h* of section 4 does not apply was a member, or by members of the family of such previous transferor, or by a farming corporation to which a disposition by such previous transferor would be a disposition described in clause *h* of section 4;

- (b) "designated land" means all land situate in Ontario and every right, estate, interest, tenement or hereditament existing at law or in equity in, over, to, or affecting land or capable of being registered in any land registry office in Ontario, fixtures, and buildings or structures attached to land, whether or not owned by persons other than the owner of the freehold of the land to which they are attached,

but "designated land" does not include any land in Ontario that is, within the meaning of paragraph *c* of subsection 15 of section 66 of the *Income Tax Act* (Canada), "Canadian resource property", or an interest held in land solely as security for some indebtedness secured by the land;

(c) "dispose", "disposed of", and expressions of like import when used with reference to designated land, mean a disposition which has or is deemed to have occurred with respect to designated land;

(d) "disposition" includes,

- (i) a sale or transfer, however effected, of any part of the beneficial interest in designated land,
- (ii) the sale, transfer, or assignment of an option providing for the acquisition of designated land, or the transfer of designated land made to comply with the terms of any such option that has been exercised,
- (iii) the entering into a lease or similar arrangement of any kind with respect to designated land where the term of the lease or arrangement, including any renewals or extensions thereof, may exceed ten years, and the sale, assignment or transfer of the rights under any such lease or arrangement exercisable by the lessee or in the case of an arrangement similar to a lease, by the person in a position similar to that of the lessee,
- (iv) any change in the entitlement to, or any accretion to, the beneficial interest in designated land as a result of the death of any person,
- (v) any change in the composition of, the membership of, or the persons beneficially interested in any organization, syndicate, association of persons, partnership, joint venture or corporation without share capital, 50 per cent or more of the assets of which consist of designated land, if the effect of such change is that control over the use of the designated land or the proceeds of its disposition or of a subsequent disposition is exercisable in fact by a different person or group of persons,

- (vi) the sale or transfer in any manner of the beneficial interest in, or the allotment and issue of, shares to which are attached 50 per cent or more of the voting rights ordinarily exercisable at meetings of the shareholders of the corporation and that are shares in the capital stock of a corporation 50 per cent or more of the assets of which consist of designated land, or
- (vii) the amalgamation, merger, consolidation or any other like arrangement of any two or more corporations, 50 per cent or more of the assets of any one of which consist of designated land, that has the effect of making control over the use of the designated land or the proceeds of its disposition or of a subsequent disposition exercisable in fact, and whether directly or indirectly, by a different person or group of persons,

but for greater certainty "disposition" does not include any transfer of property for the purpose only of securing a debt or a loan, or any transfer by a creditor for the purpose only of returning property that had been used as security for a debt or a loan, or any transfer of property by virtue of which there is a change in the legal ownership of the property without any change in the beneficial ownership thereof;

- (e) "farming" includes tillage of the soil, the breeding, raising or grazing of live stock of all kinds, the raising of poultry and the production of poultry products, fur farming, dairy farming, fruit growing, the growing of food for human consumption or for the feeding of live stock, and the keeping of bees;
- (f) "farming corporation" means a corporation,

- (i) every share of which that confers on the holder thereof the right to vote is, at the date of any disposition with respect to which the expression is being applied, owned either by the transferor making the disposition or by a member of his family, and

- (ii) 95 per cent of the assets of which are "farming assets" within the meaning of section 17a of *The Succession Duty Act*;

R.S.O. 1970,
c. 449

- (g) "member of the family" means grandparents, parents, uncles, aunts, the spouse, brothers, sisters, children, grandchildren, nephews, nieces, sons-in-law, daughters-in-law, mother-in-law or father-in-law of a person with respect to whom the expression is being applied;
- (h) "Minister" means the Minister of Revenue;
- (i) "municipality" includes a district, regional or metropolitan municipality, a local board, as defined in *The Municipal Affairs Act*, of any municipality, and an elementary or secondary school board or board of education having jurisdiction in territory without municipal organization;
- (j) "net maintenance costs" means all costs, including interest payments and property taxes, incurred in connection with the maintenance of the designated land to which the expression is being applied, other than costs incurred in connection with the disposition of designated land, and after deducting any income howsoever earned by the transferor from the designated land, including income from his own use of the designated land or from the granting of any right or interest therein, but no deduction shall be made with respect to income earned from farming the designated land by a farmer who is carrying on farming thereon and whose chief source of income is from farming and who owns the designated land;
- (k) "prescribed" means prescribed by regulation;
- (l) "proceeds of disposition" means,
 - (i) the gross sale price or any other consideration given for the disposition of designated land or received by the transferor of designated land, the assumption, undertaking, extinguishment or release of any liability of the transferor or affecting designated land disposed of, and the value of any benefit of whatsoever kind conferred on the transferor or on some person at the direction of the transferor as part of the arrangement relating to the disposition of designated land,
 - (ii) where designated land is transferred to comply with the terms of an option that provides for the acquisition of the designated land and that has been exercised, the value

of the consideration given for the granting of the option, plus the value of the cost provided for in the option of acquiring the designated land upon the exercise of the option, or

- (iii) an amount equal to the fair market value of the designated land disposed of where the disposition is,
 - (A) by a transferor to a person or persons with whom the transferor is not dealing at arm's length at the time of the disposition,
 - (B) to a corporation in consideration of the allotment and issue of its shares,
 - (C) to an organization, syndicate, association of persons, partnership, joint venture or corporation without share capital in consideration of the admission to membership therein of any person, or
 - (D) by way of gift,

but no proceeds of disposition arise on a disposition under the last will and testament of any person or on the intestacy of any person;

- (m) "regulation" means a regulation made under this Act;
- (n) "tax" unless expressly otherwise restricted, means the taxes imposed by this Act and the interest payable thereon;
- (o) "taxable value" when used in relation to designated land means the amount by which the proceeds of disposition of designated land exceed the adjusted value of that designated land at the time of its disposition, and the taxable value of designated land shall be computed separately for each disposition of designated land;
- (p) "transferor" means,
 - (i) except as provided in subclause ii, iii or iv, the person or persons who make or

effect any disposition with respect to designated land with respect to which the expression "transferor" is being applied,

- (ii) in the case of the disposition of any beneficial interest in designated land held in trust, the person or persons who is or are, immediately prior to the making of such disposition, entitled under the trust to have the designated land or the proceeds of its sale held for his or their benefit, or if no such person can be identified, every person who is a beneficiary under a trust extending to designated land the beneficial interest in which is disposed of,
- (iii) in the case of a disposition described in subclause iv of clause d, the person or persons who is or are, immediately after the disposition, beneficially interested in the designated land with respect to which such disposition has occurred, or
- (iv) in the case of a disposition described in subclause v, vi or vii of clause d, the person or persons who is or are, immediately prior to the occurrence of such disposition, beneficially interested in the designated land with respect to which such disposition has occurred,

and every disposition of or with respect to designated land shall be deemed to be made by the person or persons by this clause defined to be a "transferor" with respect to the disposition;

- (q) "Treasurer" means the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs.

*Idem
1970-71.
c. 63(Can.)*

- (2) Persons who, for the purposes of the *Income Tax Act* (Canada), would not be considered as dealing at arm's length shall not be considered to deal at arm's length for the purposes of this Act.

Idem

- (3) For the purpose of this Act, "disposition" includes any arrangement or ordering in the nature of a disposition, whether by one transaction or a number of transactions effected for the purpose, that in any manner effectively changes the identity of the persons who are entitled in fact or in law to control or derive a profit from designated land or its disposition.

(4) For greater certainty, it is declared that where a disposition described in subclause v, vi or vii of clause d of subsection 1 occurs, it is deemed to be a disposition of or with respect to any designated land referred to in that one of the said subclauses that describes the disposition that has occurred.

(5) For the purpose of this Act, "control" means control by another corporation, individual or trust that is in fact exercising effective control either directly or indirectly and either through the holding of shares of the corporation or of any other corporation or through the holding of a significant portion of any class of shares of the corporation or of the outstanding debt of the corporation or of any shareholder or member of the corporation, or by any other means whether of a like or different nature.

(6) Where designated land is disposed of by a corporation, 50 per cent or more of the assets of which consist of designated land, to its shareholders as a part of the winding up or dissolution of the corporation, the adjusted value of the designated land on the first subsequent disposition of it by such shareholders shall be computed as though the corporation, whether or not then in existence, and such shareholders were the same person.

(7) Where, on the disposition of any designated land, the adjusted value applicable to the designated land disposed of is determinable or ascertainable by reference to a larger amount of designated land of which that being disposed of is only a part, the adjusted value applicable to the designated land being disposed of shall be apportioned in such reasonable manner as will reflect the proportional value that the designated land disposed of is to the value of the larger amount of designated land.

(8) For the purpose of subclause iv of clause a of subsection 1, where the number of months (excluding any period of time prior to the 9th day of April, 1974) during which the transferor owned the designated land prior to his disposition of it exceeds the largest number of such months that is exactly divisible by twelve,

- (a) sub-subclause A of the said subclause iv applies to such excess number of months as though the number ten appearing in sub-subclause A were that number that is in the same ratio to ten as the number of such excess months is to twelve; and
- (b) paragraph 1 of sub-subclause B of the said subclause iv applies to include net maintenance costs incurred

by the transferor during such excess number of months.

Application of
Act to
certain
disposi-
tions

(9) For the purposes of clause *a*, *l* or *o* of subsection 1, or of subsection 8, where after the 9th day of April, 1974, a disposition described in subclause *v*, *vi* or *vii* of clause *d* of subsection 1 occurs of or with respect to designated land, the person or persons who is or are, immediately prior to the occurrence of such disposition, beneficially interested in the designated land with respect to which such disposition has occurred, shall be deemed to have disposed of it for proceeds of disposition equal to the amount of the fair market value of the designated land at the time of such disposition, and the person or persons who is or are, immediately following the occurrence of such disposition, beneficially interested in the designated land with respect to which such disposition has occurred, shall be deemed to have acquired the designated land for an amount equal to the amount of its fair market value at the time of such disposition, and for the purpose of determining the adjusted value of the designated land on the occurrence of the next subsequent disposition of it, subsection 8 and subclauses *iii*, *iv* and, where applicable, *v* of clause *a* of subsection 1 apply only to the period ending at the time of the next subsequent disposition of it and commencing at the time when the transferor making such next subsequent disposition was last deemed to have acquired the designated land.

Tax on
designated
land

2.—(1) Subject to section 4, where, after the 9th day of April, 1974, any disposition of designated land occurs, there shall be imposed and levied, for the uses of Her Majesty in right of Ontario, upon the designated land with respect to which such disposition occurs a tax computed at the rate of 50 per cent of the taxable value of designated land with respect to which such disposition occurs.

Idem

(2) Where there is a disposition within the meaning of subclause *vi* or *vii* of clause *d* of subsection 1 of section 1 of any designated land and the result of the disposition is that control of the corporation beneficially interested in the designated land is exercisable by a person or a group of persons different from those by whom control of the corporation was exercisable before the disposition, there shall be imposed and levied, for the uses of Her Majesty in right of Ontario, upon the designated land a tax, in addition to the tax imposed by subsection 1, calculated on the proceeds of disposition and computed at the rate of 20 per cent of the proceeds of disposition where the corporation beneficially interested in the designated land is, immediately after the disposition

has occurred, a non-resident corporation as defined in
The Land Transfer Tax Act, 1974.

1974, c. 8

(3) The tax is payable by the transferor of any designated land disposed of by him and shall be paid at the time of the disposition of the designated land, and if not then paid, the tax bears interest at the rate of 9 per cent per annum until a different rate is prescribed. ^{Payment of tax}

(4) The tax is payable to the Treasurer and shall be remitted ^{Idem} to the Minister by the person responsible for its payment.

3.—(1) An administrator, executor, trustee or person acting in a fiduciary capacity for the transferor of designated land that is disposed of is not, as such, personally liable for the tax, but no person in Ontario shall pay, deliver, assign or transfer to or for the benefit of the transferor or of any person at the direction of the transferor any money or property coming into his hands as administrator, executor, trustee or person acting in a fiduciary capacity and by reason of the disposition of designated land without deducting therefrom or collecting an amount sufficient to pay the tax on the designated land disposed of. ^{Trustees not personally liable}

(2) Every such administrator, executor, trustee or person acting in a fiduciary capacity for the transferor who, knowing that tax is payable, makes or permits any payment, delivery, assignment or transfer referred to in subsection 1 without deducting or collecting an amount sufficient to secure the tax is guilty of an offence and on summary conviction is liable to pay to the Treasurer as a penalty an amount equal to 150 per cent of the amount of such tax. ^{Penalty}

(3) An administrator, executor, trustee or person acting in a fiduciary capacity for the transferor who has deducted or collected any money on account of the tax shall remit it to the Minister and is deemed to be a person who has received money for the Crown or for which he is accountable to the Crown within the meaning of *The Financial Administration Act.* ^{Tax held by trustee} ^{R.S.O. 1970, c. 166}

4. No designated land is liable to the tax imposed by ^{Exemptions} subsection 1 of section 2,

(a) when the designated land is disposed of by, or by way of gift to, an organization that is, at the time of the disposition, a "registered Canadian charitable organization" within the meaning of paragraph *c* of subsection 8 of section 110 of the *Income Tax Act* (Canada) and is not a trust ^{1970-71, c. 63 (Can.)}

exempt from tax under Part I of that Act by paragraph *f* or *h* of subsection 1 of section 149 of that Act;

- (b) when the designated land is disposed of by a municipality;
- (c) when the designated land is disposed of by a corporation, 50 per cent or more of the assets of which consist of designated land, to its shareholders as part of the winding up or dissolution of the corporation;
- (d) when the designated land disposed of is, at the time of its disposition, predominantly used as a tourist resort of a class, kind or designation prescribed by the Minister by regulation, or for commercial or industrial purposes, other than the rental of apartment suites or residential accommodation for use as the principal residence of the lessee, and if the designated land so disposed of contains buildings, structures or other capital improvements, excluding any costs or value attributable to subdividing and servicing the designated land, that have a value, at the time of the disposition, equal to 40 per cent or more of the proceeds of disposition of the designated land;
- (e) when the designated land disposed of is the principal residence of the transferor ordinarily inhabited by him or by him and his spouse, children or other dependants, together with land subjacent to the principal residence and land immediately contiguous to such subjacent land to the extent that such subjacent land and the immediately contiguous land do not exceed ten acres, but where only part of the designated land disposed of is ordinarily inhabited by the transferor or by him and his spouse, children or other dependants as his principal residence, the exemption conferred by this clause applies only to the proportion of the taxable value on such disposition that is in the same ratio to the whole of such taxable value as that part of any building that is ordinarily inhabited by the transferor or by him and his spouse, children or other dependants as his principal residence is of the whole of the building or buildings included in the designated land so disposed of;
- (f) when the designated land disposed of is not designated land described in clause *e* or is not immediately

contiguous thereto, and is used by the transferor or by members of his family for his or their personal recreation and enjoyment and is his principal recreational property, but this clause does not apply to any part of such designated land so disposed of in excess of twenty acres or where the disposition is to a non-resident person as defined in *The Land Transfer Tax Act, 1974*^{1974, c. 8};

- (g) when the designated land disposed of includes a building or structure,

- (i) that the transferor has constructed or caused to be constructed, or
- (ii) that the transferor has renovated or caused to be renovated at a cost of not less than 20 per cent of,
 - (A) where the designated land was acquired by him after the 9th day of April, 1974, the cost to him of his acquisition of the designated land or the fair market value of the designated land at the time of its acquisition by the transferor if such fair market value is greater than the cost of acquisition, or
 - (B) where the designated land was acquired by the transferor on or before the 9th day of April, 1974, its fair market value ascertained as at the 9th day of April, 1974,

and that has a value at the time of the disposition of the designated land of not less than 40 per cent of the total proceeds of disposition of the designated land;

- (h) when the designated land disposed of is, at the time of its disposition, used by the transferor, by members of the family of the transferor, by a farming corporation, or by the transferor and members of his family in farming, and the disposition of such designated land is to a member or members of the family of the transferor or to a farming corporation for the purpose of enabling the person to whom the disposition is made to carry on farming on the designated land;
- (i) when the designated land is taken under statutory authority or is sold to a person by whom notice of an intention to take it under statutory authority was given; or

R.S.O. 1970.
c. 100

(j) when the designated land is disposed of to Her Majesty in right of Ontario, a Crown agency within the meaning of *The Crown Agency Act*, a municipality, Ontario Hydro, Her Majesty in right of Canada, or to an agent of Her Majesty in right of Canada.

Special
lien
conferred

5.—(1) Every tax imposed upon designated land by this Act is, until paid, a special lien in favour of Her Majesty in right of Ontario upon the designated land and has complete priority over every claim, privilege, lien, encumbrance, right, title or interest of any person that arose or came into existence as part of or subsequent to the disposition of the designated land as a result of which tax was imposed on the designated land, and such special lien has priority over every execution in the hands of any sheriff or other officer that affects the designated land, whether the designated land was subject to the execution before or after the disposition of the designated land.

Where
no lien
attaches

(2) The special lien conferred by this Act does not attach to any designated land disposed of where the Minister has given his certificate that no lien is claimed with respect to the designated land, but the giving of the certificate does not destroy the special lien for tax resulting from any disposition of designated land occurring after the date as of which the certificate is given, and the giving of the certificate does not impair or relieve the transferor from his responsibility to pay any tax imposed by this Act.

Idem

(3) Where designated land is disposed of and, in order to recognize or give effect to the disposition, it is necessary to register upon the title to the designated land disposed of an instrument or writing under the registry system or land titles system, the special lien conferred by this Act does not attach to the designated land in respect of such disposition if there is attached to or made part of such instrument or writing, at the time it is tendered to a land registrar for registration, the affidavit of the transferor, or of some individual authorized in writing by the transferor to make such affidavit, stating that the disposition of designated land evidenced in the instrument or writing attached to such affidavit or of which the affidavit is a part is a disposition described in a clause and, where applicable, a subclause (which clause and subclause shall be expressly named in the affidavit) of section 4 of this Act, but the making of such affidavit does not impair or relieve the transferor from his responsibility to pay any tax imposed by this Act.

Notice of
intended
sale

(4) Before the issue of a warrant under subsection 5, the Minister shall send by mail or by registered mail, or deliver by personal service, a notice to all persons who have an

interest, encumbrance or charge registered under the land titles system or the registry system against the designated land for the sale of which the warrant is to be issued that he intends to have the designated land that is subject to the special lien conferred by this Act sold pursuant to subsection 5, and such notice shall be given not less than thirty days or more than sixty days before the issue of the warrant, and shall be sent, in the case of a notice sent by mail, to the latest known address of each person to whom notice is to be given and to such other address as, in the opinion of the Minister, may be more likely to bring the notice to the person's attention.

(5) Subject to subsection 4, the Minister may, by his warrant Recovery of lien directed to the sheriff of the county, district or judicial by sale district in which is situate any designated land that is subject to the special lien conferred by this Act, require the sheriff to sell the designated land within six months or such longer period as is stated in the warrant, and the sheriff, upon receiving the warrant, shall proceed within the period specified to sell the land in the same manner as for a sale under a writ of execution issued out of the Supreme Court, and any person purchasing from the sheriff at such a sale shall take good title to the designated land free and clear of all encumbrances and claims of any kind of all persons whatsoever that do not have priority over the special lien but subject to all the rights and encumbrances of persons who have an interest in the designated land that have priority over the special lien.

(6) The proceeds of sale received by the sheriff from a ^{Idem} sale under a warrant authorized by subsection 5 shall be applied first to pay the costs and expenses of the sheriff in conducting the sale and next in payment of the amount of tax that was a special lien on the designated land conferred by this Act, and any surplus thereafter remaining shall be paid, in order of their priorities, to those whose rights in the designated land were subject to the special lien, and, if the order of those priorities cannot be established by the sheriff, shall be paid into court to be dealt with as the court shall direct.

(7) At any time prior to a sale authorized by subsection 5, Right to discharge any person interested in the designated land affected by the lien special lien conferred by this Act may pay to the Minister a sum sufficient to discharge the special lien, and if the special lien is discharged by some person having an encumbrance against the designated land, the amount accepted by the Minister may be added to that person's encumbrance and shall, for all purposes and in every court, thereafter be treated as part of the encumbrance and shall bear interest at the rate provided for in the encumbrance and shall be collectable in the same way as the encumbrance is enforceable.

Waiver
of lien

(8) Upon such conditions as he may impose, the Minister may abandon, postpone, release or waive with respect to all or any part of any designated land any special lien conferred by this Act.

Avoidance

6. Where the result of one or more sales, exchanges, declarations of trust, or other transactions of any kind whatever is that a transferor has disposed of property under circumstances such that he may reasonably be considered to have artificially or unduly reduced the amount of the taxable value of designated land that he has disposed of, the taxable value shall be computed as if such reduction had not occurred.

Refund

7. Where a person has paid an amount under this Act as tax that is not payable as tax under this Act, the Minister may, upon receipt of satisfactory evidence that the amount was wrongly paid, authorize the Treasurer to refund such amount or any part thereof, but no refund shall be made unless it is applied for within three years after the date of the payment of any amount that is alleged not to have been payable as tax under this Act.

Assessment

8.—(1) Where any person responsible for the payment of tax fails to pay it as required under this Act, the Minister may make an assessment of the tax for which such person is responsible and which has not been paid.

Notice of
assessment

(2) Where the Minister has made an assessment under subsection 1, he shall send by mail or by registered mail or deliver by personal service a notice of assessment to the person so assessed, and the amount of the assessment shall be remitted to the Minister by the person so assessed within thirty days from the date of mailing or delivery of the notice of assessment.

Idem

(3) Where the Minister has made an assessment under subsection 1, the notice of assessment may provide that the amount assessed is payable forthwith.

Assessment
from time
to time

(4) The Minister may, at any time he considers reasonable, assess or reassess any tax payable by any person under this Act.

Assessment
on inspection

(5) Where it appears from an inspection, audit or examination of the books of account, records or documents of any person that this Act or the regulations have not been complied with, the person making the inspection, audit or examination shall calculate the tax payable in such manner and form and by such procedure as the Minister considers adequate and expedient, and the Minister shall assess the amount of the tax.

(6) The Minister shall send by mail or by registered mail Notice of assessment under subsection 4 or 5 made under subsection 4 or 5 to the person so assessed at his latest known address, and the notice may provide that the amount assessed is payable forthwith.

(7) Liability for tax is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made. Liability to tax not affected

(8) The Minister is not bound by any information delivered by or on behalf of any person responsible for the payment of the tax and may, notwithstanding any information that has been delivered or if no information has been delivered, assess the tax payable under this Act. Minister not bound by information

(9) An assessment, subject to being varied or vacated on an objection or appeal and subject to a reassessment, shall be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto. Assessment valid and binding

(10) The amount of any assessment is payable within the time required by the notice of assessment whether or not an objection or appeal from the assessment is made or taken. Idem

9.—(1) Where a person objects to an assessment made under section 8, he may, within ninety days after the day of mailing or delivery by personal service of the notice of assessment, serve on the Minister a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts. Notice of objection

(2) A notice of objection under this section shall be served by being sent by registered mail addressed to the Minister. Service

(3) Upon receipt of a notice of objection, the Minister shall with all due dispatch reconsider the assessment and vacate, confirm or vary the assessment or reassess, and he shall thereupon notify the person who has made the objection of his action by registered mail. Reconsideration

10.—(1) After the Minister has given the notification required by subsection 3 of section 9, a person who has served notice of objection under section 9 may appeal to the Supreme Court to have the assessment vacated or varied or reassessed, but no appeal under this section shall be instituted after the expiration of ninety days from the day on which notice has been mailed to such person under Appeal

subsection 3 of section 9, and an appeal under this section shall not be made to the Divisional Court.

Appeal, how instituted

(2) An appeal to the Supreme Court shall be instituted by serving on the Minister a notice of appeal in duplicate in the prescribed form and by filing a copy thereof with the Registrar of the Supreme Court or with the Local Registrar of the Supreme Court for the county, district or judicial district in which is situate the designated land the tax imposed on which is under appeal.

Service

(3) A notice of appeal shall be served on the Minister by being sent by registered mail addressed to the Minister.

Contents of notice of appeal

(4) The person appealing shall set out in his notice of appeal a statement of the allegations of fact and the statutory provisions and reasons that he intends to submit in support of his appeal.

Reply to notice of appeal

(5) After the service on him of a notice of appeal under this section, the Minister shall with all due despatch serve on the person appealing and file in the Supreme Court where the notice of appeal was filed a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such further allegations of fact and of such statutory provisions and reasons as he considers relevant.

Matter deemed action

(6) Upon the filing in the Supreme Court of the material referred to in subsection 5, the matter shall be deemed to be an action in the court, and the practice and procedure of the court, including the right of appeal and the practice and procedure relating to appeals, apply to every matter that is deemed to be an action under this subsection, and every judgment and order given or made in every such action may be enforced in the same manner and by the like process as a judgment or order given or made in an action commenced in the court.

Disposition of appeal

(7) The court may dispose of an appeal by allowing it, by dismissing it, or by allowing it in part and directing the Minister to vacate the assessment, vary the assessment or reconsider the assessment and reassess as indicated by the judgment of the court.

Idem

(8) In delivering judgment disposing of an appeal, the court may order payment or refund of tax by the appellant or by the Treasurer, as the case may be, and may make such order as to cost as is considered proper.

Irregularities

(9) No assessment shall be vacated or varied on appeal by reason only of an irregularity, informality, omission or

error on the part of any person in the observance of any directory provision of this Act.

(10) The time within which a notice of objection under subsection 1 of section 9 or a notice of appeal under subsection 1 of this section is to be served may be extended by the Minister if application for extension is made before expiration of the time for service of the notice of objection or notice of appeal, as the case may be.

11. Any payment to the Treasurer under this Act, other than a payment of penalties or fines imposed for offences under this Act, shall first be applied to any interest payable on any tax imposed by this Act.

12.—(1) Any person thereunto authorized by the Minister for any purpose related to the administration or enforcement of this Act may at all reasonable times enter into any premises where any business is carried on or any property is kept or anything is done in connection with any business or where any books or records are or should be kept, and may,

- (a) audit or examine the books, records, accounts, vouchers, letters, telegrams, or other documents that relate or may relate to any disposition of designated land or to the amount of tax payable under this Act;
- (b) examine any designated land disposed of or any property the value of which formed or may have formed part of the adjusted value or proceeds of disposition referable to any disposition of designated land, or any property, process or matter an examination of which may, in his opinion, assist him in determining the accuracy of any information that was or should have been furnished to the Minister or the amount of any tax payable under this Act;
- (c) require any transferor or any person to whom a disposition of designated land has been or may have been made or, if such transferor or person is a partnership or corporation, require a partner or the president, manager, secretary or any director, agent or representative thereof or any other person on the premises of such transferor or person to give him all reasonable assistance with his audit or examination and to answer all questions relating to the audit or examination either orally or, if he so requires, in writing, on oath or by statutory declaration, and for that purpose require such person to attend at the premises with him; and

(d) if during the course of an audit or examination it appears to him that there has been a contravention of this Act or the regulations, seize and take away any of the records, books, accounts, vouchers, letters, telegrams and other documents and retain them until they are produced in any court proceedings.

Idem (2) The Minister may, for any purpose related to the administration or enforcement of this Act, by registered letter or by a demand served personally, require from any transferor, or if such transferor is a partnership or corporation, from a partner or the president, manager, secretary or any director, agent or representative thereof,

- (a) any information concerning designated land or a disposition of designated land that is believed to have occurred; or
- (b) production, or production on oath, of any books, letters, accounts, invoices, statements, financial or otherwise, or other documents,

within such reasonable time as is stipulated therein.

Idem (3) The Minister may, for any purpose related to the administration or enforcement of this Act, by registered letter or by a demand served personally, require from any person, partnership, syndicate, trust or corporation holding any amount for or paying or liable to pay any amount to a transferor or to any person to whom a disposition of designated land has been or may have been made production, or production on oath, of any books, letters, accounts, invoices, statements, financial or otherwise, or other documents within such reasonable time as is stipulated therein.

Idem (4) The Minister may, for any purpose related to the administration or enforcement of this Act, with the approval of a judge of the Supreme Court, which approval the judge is hereby empowered to give upon *ex parte* application, authorize in writing an officer of the Ministry of Revenue, together with such members of the Ontario Provincial Police Force or other peace officers as he calls upon to assist him and such other persons as are named therein, to enter and search, if necessary by force, any building, receptacle or place for documents, books, records, papers or things that may afford evidence as to the contravention of any provision of this Act or the regulations and to seize and take away any such documents, books, records, papers or things and retain them until they are produced in any court proceedings.

Documents
to prove
tax
liability

(5) The Minister may, by registered letter or by a demand served personally, require the production under oath or

otherwise by any person, partnership, syndicate, trust or corporation, or by his or its agent or officer, of any letters, accounts, invoices, statements, financial or otherwise, books or other documents in the possession or in the control of such person, partnership, syndicate, trust or corporation or of his or its agent or officer for the purpose of determining what tax, if any, is imposed by this Act on designated land and what person is responsible for its payment, and production thereof shall be made within such reasonable time as is stipulated in such registered letter or demand.

(6) Where a book, record or other document has been seized, ^{Copies} examined or produced under this section, the person by whom it is seized or examined or to whom it is produced, or any officer of the Ministry of Revenue, may make or cause to be made one or more copies thereof, and a document purporting to be certified by the Minister or a person thereunto authorized by the Minister to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have had if it had been proved in the ordinary way.

(7) No person shall hinder or molest or interfere with ^{Compliance} any person doing anything that he is authorized by this section to do or shall prevent or attempt to prevent any person doing any such thing.

(8) Notwithstanding any other law to the contrary, every ^{Idem} person shall, unless he is unable to do so, do everything he is required by this section to do.

(9) Declarations or affidavits in connection with statements ^{Administration} of information submitted pursuant to this section may be ^{of oaths} taken before any person having authority to administer an oath or before any person specially authorized for that purpose by the Lieutenant Governor in Council, but any person so specially authorized shall not charge any fee therefor.

13.—(1) Upon default of payment of any amount assessed ^{Recovery} _{of tax} under section 8,

(a) the Minister may bring an action for the recovery thereof in any court in which a debt or money demand of a similar amount may be collected, and every such action shall be brought and executed in and by the name of the Minister or his name of office and may be continued by his successor in office as if no change had occurred and shall be tried without a jury; and

(b) the Minister may issue a warrant directed to the sheriff of any county, district or judicial district in which any property of a person liable to make a

payment or remittance under this Act is located or situated for the amount of the tax owing by him, together with interest thereon from the date of the issue of the warrant and the costs and expenses of the sheriff, and such warrant has the same force and effect as a writ of execution issued out of the Supreme Court.

Compliance proved by affidavit

(2) For the purpose of any proceeding or prosecution taken or instituted under this Act, the facts necessary to establish compliance on the part of the Minister with this Act as well as the failure of any person to comply with the requirements of this Act shall, unless evidence to the contrary satisfactory to the court is adduced, be sufficiently proved in any court of law by affidavit of the Minister or of any officer of the Ministry of Revenue.

Remedies to recover tax

(3) The use of any of the remedies provided by this section does not bar or affect any of the other remedies therein provided, and the remedies provided by this Act for the recovery and enforcement of the payment of any tax are in addition to any other remedies existing by law, and no action or other proceeding taken in any way prejudices, limits or affects any lien, charge or priority existing under this Act or at law in favour of Her Majesty in right of Ontario.

Garnishment

14.—(1) When the Minister has knowledge or suspects that a person is or is about to become indebted or liable to make any payment to a person liable to make a payment or remittance under this Act, he may, by registered letter or by a letter served personally, require the first-named person to pay the moneys otherwise payable to the second-named person in whole or in part to the Treasurer on account of the liability under this Act.

Idem

(2) The receipt of the Treasurer for moneys paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

Liability of debtor

(3) Every person who has discharged any liability to a person liable to make a payment or remittance under this Act without complying with the requirements under this section is liable to pay to the Treasurer an amount equal to the liability discharged or the amount that he was required under this section to pay to the Treasurer, whichever is the lesser.

Service of garnishee

(4) Where a person who is or is about to become indebted or liable to make a payment to a person liable to make a payment or remittance under this Act carries on business under

a name or style other than his own name, the registered or other letter under subsection 1 may be addressed to the name or style under which he carries on business and in the case of personal service, shall be deemed to have been validly served if it has been left with an adult person employed at the place of business of the addressee.

(5) Where the persons who are or are about to become indebted or liable to make a payment to a person liable to make a payment or remittance under this Act carry on business in partnership, the registered or other letter under subsection 1 may be addressed to the partnership name and, in the case of personal service, shall be deemed to have been validly served if it has been served on one of the partners or left with an adult person employed at the place of business of the partnership.

(6) Subject to the provisions of *The Wages Act*, where the Minister has under this section required an employer to pay to the Treasurer on account of an employee's liability under this Act moneys otherwise payable by the employer to the employee as remuneration, the requirement is applicable to all future payments by the employer to the employee in respect of remuneration until the liability under this Act is satisfied and operates to require payments to the Treasurer out of each payment of remuneration of such amount as may be stipulated by the Minister in the registered letter or letter served personally.

15.—(1) Every person who recklessly or knowingly makes an affidavit provided for in subsection 3 of section 5 that is false in some material particular is guilty of an offence and on summary conviction is liable to a fine of not less than \$100 plus an amount that is not less than the tax imposed on the designated land by subsection 1 of section 2, as determined under subsection 3, and resulting from the disposition with respect to which the affidavit relates.

(2) Every person who is required to remit to the Minister the tax imposed by this Act and who fails to remit the tax is guilty of an offence and on summary conviction is liable to a fine of not less than \$100 and an additional amount of not less than the tax, as determined under subsection 3, that should have been remitted.

(3) The Minister shall determine the amount of the tax referred to in subsection 1 or 2 from such information as is available to him, and shall issue a certificate as to the amount, but except where the Minister considers that there has been deliberate evasion of this Act, he shall not take into account a period of more than three years in determining the amount of tax referred to in the certificate.

Idem (4) In any prosecution under subsection 1 or 2, a certificate that is signed or that purports to be signed by the Minister or Deputy Minister of Revenue and that states the amount of tax is *prima facie* evidence of the amount of tax referred to in subsection 1 or 2 and of the authority of the person giving or making the certificate without any proof of appointment or signature.

Information for more than one offence (5) Any information in respect of an offence under this Act may be for one or more than one offence, and no information, warrant, conviction or other proceeding in a prosecution under this Act is objectionable or insufficient by reason of the fact that it relates to two or more offences.

Tax not affected (6) Neither the application of any provision of this section nor the enforcement of any penalty under this Act suspends or affects any remedy for the recovery of any tax payable under this Act.

Offences **16.**—(1) Every person who contravenes section 12 is guilty of an offence and on summary conviction is liable to a fine of \$25 for each day during which the default continues.

Idem (2) Every person who contravenes any of the provisions of this Act or the regulations for which no other penalty is provided is guilty of an offence and on summary conviction is liable for a first offence to a fine of not less than \$25 and not more than \$200, and for any subsequent offence to a fine of not less than \$100 and not more than \$1,000.

Idem (3) Every person who has,

- (a) knowingly, made, participated in, assented to or acquiesced in the making of false or deceptive statements required by or under this Act or the regulations;
- (b) to evade payment of a tax imposed by this Act, destroyed, altered, mutilated, secreted or otherwise disposed of any record, document or thing;
- (c) wilfully, in any manner, evaded or attempted to evade compliance with this Act or payment of tax imposed by this Act; or
- (d) conspired with any person to commit any offence described in clause *a*, *b* or *c*,

is guilty of an offence and on summary conviction, in addition to any penalty otherwise provided by this Act, is

liable to a fine of not less than \$200 and not more than an amount equal to double the amount of the tax that should have been remitted or that was sought to be evaded, or to imprisonment for a term of not more than two years, or to both.

(4) Any officer, director or agent of a corporation who directed, authorized, assented to, acquiesced in or participated in the commission of any act which is an offence under this Act for which the corporation would be liable for prosecution is guilty of an offence and on summary conviction is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

17. An information in respect of an offence against this Limitation Act shall be laid within six years of the time when the matter of the information arose.

18.—(1) Except as authorized by this section, no person employed by the Government of Ontario shall,
Communication of information

- (a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister for the purposes of this Act; or
- (b) knowingly allow any person to inspect or to have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.

(2) Notwithstanding any other Act, but subject to sub-section 3, no person employed by the Government of Ontario as witnesses shall be required, in connection with any legal proceedings,

- (a) to give evidence relating to any information obtained by or on behalf of the Minister for the purposes of this Act; or
- (b) to produce any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.

(3) Subsections 1 and 2 do not apply in respect of,

Exceptions for legal proceedings

- (a) criminal proceedings under any Act of the Parliament of Canada; or
- (b) proceedings in respect of the trial of any person for an offence under an Act of the Legislature; or

(c) proceedings relating to the administration or enforcement of this Act or the collection or assessment of tax.

**Exception
for internal
adminis-
tration**

(4) A person employed by the Government of Ontario may, in the course of his duties in connection with the administration or enforcement of this Act,

- (a)** communicate or allow to be communicated to an official or authorized person employed by the Government of Ontario in the administration and enforcement of any laws relating to the raising of revenues for provincial purposes any information obtained by or on behalf of the Minister for the purposes of this Act; and
- (b)** allow an official or authorized person employed by the Government of Ontario in the administration or enforcement of any laws relating to the raising of revenues for provincial purposes to inspect or have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.

**Exception
for objection
or appeals,
etc.**

(5) Notwithstanding any other provision of this Act, the Minister may permit a copy of any book, record, writing, return or other document obtained by him or on his behalf for the purposes of this Act to be given to,

- (a)** the person from whom the book, record, writing, return or other document was obtained; or
- (b)** any person,
 - (i)** for the purposes of any objection or appeal that has been or may be taken by that person under this Act arising out of any assessment of tax, interest or penalties under this Act in connection with which the book, record, writing, return or other document was obtained, or
 - (ii)** by whom any amount payable under this Act is payable or has been paid,

or the legal representative of any person mentioned in clause *a* or *b* or the agent of any such person authorized in writing in that behalf.

**Exception
for tax
enforcement
in other
jurisdictions**

(6) Notwithstanding any other provision of this Act, the Minister may permit information or a copy of any book,

record, writing, return or other document obtained by him or on his behalf for the purposes of this Act to be given to,

- (a) a minister of the Government of Canada or any officer or employee employed under a minister of the Government of Canada for the purposes of administration of any Act of the Parliament of Canada imposing any tax or duty; or
- (b) a minister of the government of any province of Canada or officer or employee employed under that minister, for the purposes of administering and enforcing an Act of the Legislature of that province imposing any tax or duty,

if the minister of the Government of Canada or the minister of the government of another province, as the case may be, is permitted to give to the Minister information or copies of any book, record, writing, return or other document obtained by or on behalf of the minister of the Government of Canada, or the minister of the government of that other province, as the case may be, in the administration or enforcement of that Act for the purposes of the administration of this Act.

19. Where it is established to the satisfaction of the Minister that, prior to the 10th day of April, 1974, there existed a written agreement providing for the disposition of designated land either,

- (a) at a definite price or consideration the amount or value of which is set out in the agreement and is not determinable or fixed by reference to any date or period of time after the 9th day of April, 1974; or
- (b) at a price or consideration the amount or value of which is determinable under the agreement by reference only to a valuation to be made as of a date not later than the 9th day of April, 1974,

no tax is payable under this Act by the transferor with respect to such disposition of designated land.

20.—(1) In this section, “investment property” means designated land that includes buildings that are (except for any part thereof ordinarily inhabited by the owner thereof as his principal residence) predominantly rented to be ordinarily inhabited by the tenant or occupant as his

principal residence, and that have a value of not less than 40 per cent of the fair market value of the designated land, including such buildings.

Invest-
ment
property
reduction

(2) Where, after the 9th day of April, 1977, designated land that is an investment property is disposed of and, during the three years immediately preceding such disposition, no other disposition of or with respect to that designated land has occurred and the designated land has, during the three years immediately preceding such disposition, been an investment property of the transferor, the taxable value, computed as if this section was not applicable, of the investment property so disposed of shall be reduced by an amount equal to three-tenths of such taxable value plus one-tenth thereof for each full year (commencing on or after the 9th day of April, 1974) in excess of three years during which the investment property disposed of was an investment property owned by the transferor and during which no previous disposition of or with respect thereto occurred.

Liability
for tax
on
subdivided
land

21.—(1) Notwithstanding any other provision of this Act, where designated land is disposed of by a transferor who has, prior to the disposition and in accordance with the requirements of a subdivision agreement between a municipality and the transferor and enforceable against the transferor, subdivided and serviced the designated land disposed of by him, and where, prior to or as part of the disposition, the transferor has entered into an agreement under seal with the person (hereinafter in this section called the "agreeing person") to whom the designated land is disposed of, and that agreement contains a covenant by the agreeing person that he assumes the liability of the transferor for the tax imposed by subsection 1 of section 2 upon the designated land so disposed of and a covenant that the agreeing person will, within the nine months immediately following the disposition, commence construction of buildings on at least 50 per cent of the building sites or lots included in the designated land disposed of to him and will, within the eighteen months immediately following the disposition, commence construction of buildings on the remainder of the building sites or lots included in the designated land disposed of to him, the tax imposed by subsection 1 of section 2 with respect to the disposition to the agreeing person and for which he has covenanted to be liable is, subject to subsection 4, payable by the agreeing person immediately upon his failure to comply with the covenant to commence construction of buildings required by this subsection, and the tax is recoverable and collectable by the Minister in

the same manner and with all the rights and remedies provided by this Act as if the agreeing person were the transferor making such disposition, and where an agreement described in this subsection is made between the transferor and an agreeing person, the transferor disposing of designated land to the agreeing person is not liable for the payment of the tax imposed by subsection 1 of section 2 with respect to such disposition.

(2) The tax that an agreeing person is liable to pay under subsection 1 remains a special lien conferred by section 5 on the designated land disposed of, but the special lien shall not have priority over any mortgage or charge given by the agreeing person with respect to the designated land disposed of to him in accordance with subsection 1 that is given for the purpose of securing the advance of money borrowed for the purpose of constructing upon the designated land any building that the agreeing person has covenanted in accordance with subsection 1 to construct.

(3) Where, subject to subsection 4, the covenants required by subsection 1 to be contained in an agreement made by the agreeing person have been complied with, the tax imposed by subsection 1 of section 2 with respect to the disposition to the agreeing person and for which he covenanted to be liable is cancelled, but such cancellation does not affect in any way any liability of the agreeing person to pay tax on any disposition by him of designated land, including the designated land acquired by him under his agreement with the transferor made in accordance with subsection 1.

(4) Where the Minister is satisfied that special circumstances resulting in undue hardship for an agreeing person in complying with his covenant to commence construction of buildings in accordance with subsection 1 have occurred, he may extend any time referred to in subsection 1 within which an agreeing person is required to comply with a covenant to commence construction of buildings, and upon such extension being granted, an agreeing person's liability to pay tax shall not arise until the expiration of the extended time without the covenant having been complied with.

22. Notwithstanding any other provision of this Act, where a transferor who has not previously disposed of designated land exempt in whole or in part under this section disposes of designated land that was his principal residence for a period of five consecutive years prior to his ceasing

Exemption
for dis-
position
of former
residence
of person
over age

65

ordinarily to inhabit the designated land as his principal residence, and where, at the time he ceased ordinarily to inhabit the designated land as his principal residence, the transferor was sixty-five years of age or older, and where, at the time of the disposition the transferor is ordinarily inhabiting as his principal residence premises that are not owned in whole or in part by him or his spouse or by both of them, the designated land so disposed of is exempt from the tax imposed by subsection 1 of section 2 to the extent that the designated land would have been exempt by virtue of clause *e* of section 4 had the transferor disposed of the designated land at the time he ceased ordinarily to inhabit it as his principal residence and had clause *e* of section 4 then been applicable to the disposition.

Regulations

23.—(1) The Minister may make regulations prescribing any form required by this Act or that, in his opinion, will assist in the administration of this Act, and prescribing how and by whom any form shall be completed and what information it shall contain.

Idem

(2) The Lieutenant Governor in Council may make regulations,

- (a) exempting from tax any designated land or class of designated land or exempting from tax any designated land with respect to which any disposition or class of disposition occurs;
- (b) authorizing any person to grant, after an investigation of such matters as are specified, any exemption that may be given under clause *a*;
- (c) authorizing the refund of any tax and specifying the conditions upon which such refund may be made;
- (d) prescribing the evidence required to establish facts relevant to assessments under this Act;
- (e) requiring any class of persons to make information returns respecting any class of information required in connection with assessments under this Act;
- (f) requiring a person who is, by a regulation made under clause *e*, required to make an information return to supply a copy of the information return or of a prescribed portion thereof to the person or persons in respect of whose designated land the information return or portion thereof relates;

- (g) authorizing a designated officer or class of officers employed by the Government of Ontario to exercise powers or perform duties of the Minister under this Act;
- (h) prescribing any rate of interest that is to be prescribed;
- (i) providing for the payment of interest on any refund or on any payment of tax authorized by regulation, and prescribing the rate of such interest and the method by which it is to be calculated;
- (j) defining any word or expression used in this Act that has not already been expressly defined in this Act;
- (k) providing for relaxing the strictness of this Act relative to the incidence of tax hereunder in special circumstances where, without such relaxation, inconvenience or hardship might result or the development of designated land might be impeded;
- (l) that are considered necessary for the purpose of carrying into effect the provisions of this Act according to their intent and of supplying any deficiency therein.

(3) A regulation is, if it so provides, effective with reference ^{Idem} to a period before it was filed.

24. Upon receiving Royal Assent, this Act shall be deemed ^{commencement} to have come into force on the 9th day of April, 1974 and to apply to every disposition made, tax imposed and everything that may be required to be done under this Act that is made, imposed or done after the 9th day of April, 1974.

25. This Act may be cited as *The Land Speculation Tax Act, 1974.* ^{Short title}

An Act to impose a Tax on Land in
respect of certain speculative Transactions
affecting the Control or Ownership of Land

1st Reading

April 9th, 1974

2nd Reading

May 6th, 1974

3rd Reading

June 3rd, 1974

THE HON. A. K. MEEN
Minister of Revenue

GAZON
XB
-B 56

BILL 26

Government
Publications
Government Bill

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

The Land Transfer Tax Act, 1974

THE HON. A. K. MEEN
Minister of Revenue



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

This Bill repeals *The Land Transfer Tax Act* and *The Land Transfer Tax Amendment Act, 1972*, and imposes on the registration of the conveyance of land transferred to persons who are not resident in Canada a tax of 20 per cent of the value of the consideration for the transfer. For transfers to residents of Canada, the tax remains at three-tenths of 1 per cent of the first \$35,000 of the value of the consideration for the transfer and six-tenths of 1 per cent on the remainder.

During the period between the introduction of this Bill and the giving of Royal Assent to it, a special lien for the tax is created. It will automatically expire on the 30th day of September, 1974 unless a notice of lien is registered against the land within that time. Although applicable to all taxes imposed between the introduction of the Bill and its receiving Royal Assent, the lien will only arise on the Bill receiving Royal Assent.

In view of the increased liability to tax imposed by the Bill and the differentiation between residents and non-residents of Canada, many new definitions are contained in the Bill that were not in the repealed Acts, and many administrative provisions have been added that are similar to those contained in other revenue statutes of the Province.

BILL 26**1974****The Land Transfer Tax Act, 1974**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,Interpre-
tation

- (a) “collector” means any land registrar to whom any conveyance to which this Act applies is tendered for registration;
- (b) “convey” includes the granting, assigning, releasing, surrendering, leasing or disposing of land in Ontario, agreeing to sell land in Ontario, or the giving of an option upon or with respect to any land in Ontario, whether the effect of any of the foregoing is to bring into existence an interest of any kind in land or is only for the purpose of giving effect to or formal recognition to any interest of whatsoever kind that theretofore existed in land, but “convey” does not include any transfer of land for the purpose only of securing a debt or loan, or any transfer by a creditor for the purpose only of returning land that had been used as security for a debt or loan, or any transfer of land by virtue of which there is a change in the legal ownership of the land without any change in its beneficial ownership;
- (c) “conveyance” includes any instrument or writing by which land is conveyed and includes a final order of foreclosure under any mortgage or charge affecting land;
- (d) “land” includes lands, tenements and hereditaments and any estate, right or interest therein, a leasehold interest or estate, the interest of an optionee, the interest of a purchaser under an agreement to sell land, or goodwill attributable to the location

of land or to the existence thereon of any building or fixture, and fixtures;

(e) "Minister" means the Minister of Revenue;

(f) "non-resident corporation" means a corporation incorporated, formed or otherwise organized in Canada or elsewhere,

(i) that has issued or allotted shares to which are attached 50 per cent or more of the voting rights ordinarily exercisable at meetings of the shareholders of the corporation and that are owned by one or more individuals who are non-resident persons, or by one or more corporations incorporated, formed or organized elsewhere than in Canada, or by any combination of such individuals and corporations,

(ii) that has issued or allotted shares to which are attached 25 per cent or more of the voting rights ordinarily exercisable at meetings of the shareholders of the corporation and that are owned by any one individual who is a non-resident person, or by any one corporation incorporated, formed, or organized elsewhere than in Canada,

(iii) one-half or more of the directors of which, or of the persons occupying the position of director by whatever name called, are individuals who are non-resident persons,

(iv) without share capital and one-half or more of the members of which are non-resident persons, or

(v) that is controlled directly or indirectly by one or more non-resident persons, including a non-resident corporation within the definition contained in the provisions of this clause other than this subclause;

(g) "non-resident person" means,

(i) an individual who is not ordinarily resident in Canada or who, if ordinarily resident in Canada, is neither a Canadian citizen nor an individual who has been lawfully admitted to Canada for permanent residence in Canada,

- (ii) a partnership, syndicate, association or other organization of whatsoever kind of which one-half or more of the members are non-resident persons within the meaning of subclause i, iii or iv or in which interests representing in value 50 per cent or more of the total value of the partnership property are beneficially owned by non-resident persons within the meaning of subclause i, iii or iv,
 - (iii) a trust established by a non-resident person within the meaning of subclause i, ii or iv or in which non-resident persons within the meaning of subclause i, ii or iv have 50 per cent or more of the beneficial interests in the corpus of the trust or in the income arising therefrom, and "trust" includes the trustees under such a trust in their capacity as the trustees thereof, or
 - (iv) a non-resident corporation;
- (h) "prescribed" means prescribed by regulations made under this Act;
- (i) "tax" means the tax imposed by this Act;
- (j) "transferee" includes a person to whom land is conveyed and any person whose interest in land is increased, created or given effect to as the result of a conveyance;
- (k) "transferor" includes any person making a conveyance of land to a transferee;
- (l) "Treasurer" means the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs;
- (m) "value of the consideration" includes,
- (i) moneys paid in cash,
 - (ii) the value of any property or security exchanged for the conveyance of land,
 - (iii) the value of any encumbrance, charge or other liability to which the land being conveyed is subject at the time of registration, or

(iv) in the case of a final order of foreclosure under any mortgage or charge affecting land, the amount owed under the mortgage at the time it was foreclosed, including principal, interest and all costs and expenses, other than municipal taxes, secured by the mortgage and owing at that time.

Control defined

(2) For the purposes of subclause v of clause f of subsection 1, "control" means control by another corporation, individual or trust that is in fact exercising effective control either directly or indirectly and either through the holding of shares of the corporation or of any other corporation or through the holding of a significant portion of any class of shares of the corporation or of the outstanding debt of the corporation or of any shareholder or member of the corporation, or by any other means whether of a like or different nature.

Imposition of tax

2.—(1) Every person who tenders for registration in Ontario a conveyance whereby any land is conveyed to or in trust for any transferee who is not a non-resident person shall, before the conveyance is registered, pay a tax computed at the rate of three-tenths of 1 per cent of the value of the consideration for the conveyance up to and including \$35,000, and at the rate of six-tenths of 1 per cent upon the remainder of the value of the consideration.

Idem

(2) Every person who tenders for registration in Ontario a conveyance whereby any land is conveyed to or in trust for any transferee who is a non-resident person shall, before the conveyance is registered, pay a tax computed at the rate of 20 per cent of the value of the consideration for the conveyance.

Tax to be payable on one registration only

(3) Where the same conveyance may be registered in more than one office under the registry system, in more than one office under the land titles system, or under both the registry system and the land titles system, the tax is payable only once in respect of the first of such conveyances tendered for registration.

Exemption

R.S.O. 1970.
c. 100

(4) No tax is payable where the only transferee in a conveyance that is tendered for registration is the Crown or a Crown agency within the meaning of *The Crown Agency Act*.

Minister's certification

(5) Where the Minister or some person authorized by him in writing to do so has indicated over his signature upon any conveyance that such tax as is payable has been

paid, the conveyance may be registered without the payment of tax to the collector and without the production of the affidavits required by this Act, but the Minister or a person acting under his authority shall make the certification provided for by this subsection only when he is satisfied that all tax is paid or that security for the payment of the tax has been furnished to the Minister or to a collector in a form and of a kind that is acceptable to the Minister.

3. Every collector shall, in the first week of each month or at such other time as the Minister may from time to time require in writing, send to the Minister a statement of the amount of tax collected by him during the previous month or during such other period of time as the Minister shall in writing specify, and the collector shall pay over the amount of such tax to the Treasurer for the uses of Ontario. Returns by collector

4.—(1) There shall be filed with the collector and attached by him to the conveyance to which it relates an affidavit in the prescribed form setting out the true value of the consideration for the conveyance, the true amount in cash and the value of any property or security included in the value of the consideration, the amount or value of any lien or encumbrance subject to which the conveyance was made, and such other information as the Minister may prescribe to be disclosed in the affidavit. Contents of affidavit as to consideration

(2) The affidavit required by subsection 1 may be made by the person making the conveyance or by the transferee or by any person acting for either of them under a power of attorney or as an agent authorized in writing so to act, or by the solicitor for the person making the conveyance or for the transferee, or by some other person authorized in writing by the Minister to make the affidavit. Affidavit by whom to be made

(3) In addition to the affidavit required by subsection 1, there shall be filed with the collector and attached by him to the conveyance to which it relates an affidavit in Form 1 or in such other form as is prescribed, and the affidavit shall be made by, Affidavit as to residence

- (a) the transferee to whom or in trust for whom any land is conveyed;
- (b) a trustee to whom any land is conveyed and who is shown as a trustee in the conveyance;
- (c) the transferee named in the conveyance;
- (d) an agent of any person referred to in clause *a*, *b* or *c*, if the agent is authorized in writing to make the affidavit; or

- (e) the solicitor acting in the transaction as the solicitor for any person referred to in clause *a*, *b* or *c*,

and such affidavit shall state whether the transferee to whom the land is being conveyed is a non-resident person or the trustee for a non-resident person, and shall state such other information as is required in order to complete the affidavit.

**Affidavits.
what to
contain**

(4) The affidavit required by subsection 1 or 3 shall state that the person making it has personal knowledge of the facts stated in it, and there shall be filed with the affidavit the power of attorney or written authorization, if any, referred to in subsection 2 or 3.

**Affidavit
to be
referred to
Minister**

(5) If the collector is not satisfied that the affidavit required by subsection 1 sets out the true value of the consideration for the conveyance, he may refuse to register the conveyance to which the affidavit relates until the Minister has signified over his signature that he is satisfied that the value of the consideration stated in the affidavit is the true value of the consideration.

**Tax payable
when affidavit
under subs. 3
not furnished**

(6) Where a conveyance is tendered for registration without the affidavit required by subsection 3, tax is payable at the rate provided in subsection 2 of section 2, and the collector shall not register the conveyance until such tax is paid, but if it is subsequently established to the satisfaction of the Minister that, had the affidavit required by subsection 3 been furnished to the collector, tax would have been payable as provided in subsection 1 of section 2, the Minister may refund the amount paid under this subsection in excess of the tax provided for in subsection 1 of section 2.

**Liability
of
transferor**

(7) When the affidavit required by subsection 1 is made by the transferor or by a person acting as attorney, agent or solicitor for the transferor, the transferor is personally liable to the Crown jointly and severally with the transferee for the amount of the tax.

**Right of
transferor
to recover**

(8) Where the transferor is compelled to pay the tax or a part thereof, he has the right to recover the amount so paid from the transferee in an action in any court of competent jurisdiction.

**Payment
of tax
under
protest**

5.—(1) Where the right of the collector to require payment of the tax is disputed by the person tendering a conveyance for registration, the tax may be paid under protest and the collector shall give a receipt in writing signed by him for the amount paid and stating that it was paid under

protest, and he shall thereupon refer the matter for the decision of the Minister or of such official as the Minister appoints, who may order the refund of the tax or any part thereof to the person who paid it.

(2) In any dispute over the liability to tax of any person, the Minister may, after the tax has been paid, and if the dispute involves the interpretation of a provision of this Act, or involves an issue of law in which no facts are in dispute, or involves the proper inference to be drawn from facts that are not in dispute, agree in writing with the disputing party as to the undisputed facts and thereafter apply to the Supreme Court to have the issue in dispute determined, and if the Minister does not make the application within six weeks of the date upon which the undisputed facts have been agreed upon in writing, the other party to the dispute may apply to the court to have the issue determined.

6.—(1) Upon this Act receiving Royal Assent, every tax payable under this Act as a result of the tender of any conveyance for registration after the 9th day of April, 1974 and before the day on which this Act receives Royal Assent that was not paid as herein provided for shall form a special lien upon the land conveyed by any such conveyance, and the special lien shall be in favour of Her Majesty in right of Ontario and has complete priority over every encumbrance of whatsoever kind that affects the land and that arose or came into existence on or after the 9th day of April, 1974 or was registered against the land on or after that date.

(2) The special lien conferred on the Crown by this section expires on the 30th day of September, 1974, unless prior to the expiry of the special lien, there is registered against the land affected by the special lien a notice of lien in prescribed form.

(3) Before the issue of a warrant under subsection 4, the Minister shall send by mail or by registered mail, or deliver by personal service, a notice to all persons who have an interest, encumbrance or charge registered under the land titles system or the registry system against the land for the sale of which the warrant is to be issued that he intends to have the land that is subject to the special lien conferred by this Act sold pursuant to subsection 4, and such notice shall be given not less than thirty days or more than sixty days before the issue of the warrant, and shall be sent, in the case of a notice sent by mail, to the latest known address of each person to whom notice is to be given and to such other address as, in the opinion of the Minister, may be more likely to bring the notice to the person's attention.

Recovery
of lien
by sale

(4) Subject to subsection 3, the Minister may, by his warrant directed to the sheriff of the county, district or judicial district in which is situate any land that is subject to the special lien conferred by this Act, require the sheriff to sell the land within six months or such longer period as is stated in the warrant, and the sheriff, upon receiving the warrant, shall proceed within the period specified to sell the land in the same manner as for a sale under a writ of execution issued out of the Supreme Court, and any person purchasing from the sheriff at such a sale shall take good title to the land free and clear of all encumbrances and claims of any kind of all persons whatsoever that do not have priority over the special lien but subject to all the rights and encumbrances of persons who have an interest in the land that have priority over the special lien.

Idem

(5) The proceeds of sale received by the sheriff from a sale under a warrant authorized by subsection 4 shall be applied first to pay the costs and expenses of the sheriff in conducting the sale and next in payment of the amount of tax that was a special lien on the land conferred by this Act, and any surplus thereafter remaining shall be paid, in order of their priorities, to those whose rights in the land were subject to the special lien, and, if the order of those priorities cannot be established by the sheriff, shall be paid into court to be dealt with as the court shall direct.

Right to
discharge
lien

(6) At any time prior to a sale authorized by subsection 4, any person interested in the land affected by the special lien conferred by this Act may pay to the Minister a sum sufficient to discharge the special lien, and if the special lien is discharged by some person having an encumbrance against the land, the amount accepted by the Minister may be added to that person's encumbrance and shall, for all purposes and in every court, thereafter be treated as part of the encumbrance and shall bear interest at the rate provided for in the encumbrance and shall be collectable in the same way as the encumbrance is enforceable.

Waiver
of lien

(7) Upon such conditions as he may impose, the Minister may abandon, postpone, release or waive with respect to all or any part of any land any special lien conferred by this Act.

Offence

7.—(1) Every person who knowingly contravenes any provision of this Act or who knowingly makes an affidavit required by this Act that falsely discloses the value of the consideration for any conveyance of land or falsely states that a person who is a non-resident person is not a non-resident person, is guilty of an offence and on summary conviction is liable to a fine of not less than the amount of tax that was not paid to the collector as provided for in this Act plus an amount of not less than \$50 and not more than \$1,000.

(2) For the purpose of any proceeding taken under this Act, the facts necessary to establish compliance on the part of the Minister with this Act as well as the failure of any person to comply with the requirements of this Act shall, unless evidence to the contrary satisfactory to the court is adduced, be sufficiently proved in any court of law by affidavit of the Minister or of any officer of the Ministry of Revenue.

(3) An information in respect of an offence under this Act shall be laid within three years of the time when the matter of the information arose.

8.—(1) Where a person has paid an amount under this Act as tax that is not payable as tax under this Act, the Minister may, upon receipt of satisfactory evidence that the amount was wrongly paid, authorize the Treasurer to refund such amount or any part thereof, but no refund shall be made unless it is applied for within three years after the date of the payment of any amount that is alleged not to have been payable as tax under this Act.

(2) Where a conveyance has been tendered for registration that conveys land both to non-resident persons and to persons who are not non-resident persons, the Minister may refund to the persons who are not non-resident persons an amount equal to the difference between,

- (a) the amount that would result from the application of the rates of tax in subsection 1 of section 2 to the value of the consideration attributable in the opinion of the Minister to the land conveyed to persons who are not non-resident persons; and
- (b) the amount of tax paid on the value of the consideration attributable in the opinion of the Minister to land conveyed to persons who are not non-resident persons,

but no refund under this subsection shall be made if the land is held in joint tenancy by the non-resident person and the persons who are not non-resident persons or if the Minister is of the opinion that the land conveyed to persons who are not non-resident persons cannot readily be distinguished from the land conveyed to non-resident persons.

9.—(1) Any person thereunto authorized by the Minister for any purpose related to the administration or enforcement of this Act may at all reasonable times enter into any premises or place where any business is carried on or any property is kept or where anything is done in connection with any business or where any books or records are or should be kept and,

- (a) audit or examine the books and records and any account, voucher, letter, telegram or other document that relates or may relate to the information that is or should be in the books or records or to the amount of tax payable under this Act;
- (b) examine property described in any conveyance or any property, process or matter an examination of which may, in his opinion, assist him in determining the accuracy of any affidavit required by this Act or in ascertaining the information that is or should be in the books or records or in such affidavit, or the amount of any tax payable under this Act;
- (c) require any officer, director, agent or representative of a transferee a conveyance to whom has been registered as a result of which there may be a possible liability to pay tax under this Act, and any person on the premises may be required to give him all reasonable assistance with his audit or examination and to answer all questions relating to the audit or examination either orally or, if he so requires, in writing, on oath or by statutory declaration and, for that purpose, he may require such person to attend at the premises or place with him; and
- (d) if during the course of any audit or examination it appears to him that there has been a violation of this Act or the regulations made under this Act, seize and take away any of the records, books, accounts, vouchers, letters, telegrams and other documents and retain them until they are produced in any court proceedings.

Idem

(2) The Minister may, for any purpose relating to the administration or enforcement of this Act, by registered letter or by a demand served personally, require from any person any information or additional information, or the production, or production on oath, of any books, letters, accounts, invoices, statements (financial or otherwise) or other documents within such reasonable time as is stipulated therein, provided that, in the opinion of the Minister or of the person authorized by him, it is necessary to make the demand in order to determine the liability or possible liability to tax under this Act.

Copies
as
evidence

(3) Where a book, record or other document has been seized, examined or produced under this section, the person by whom it is seized or examined or to whom it is produced, or any officer of the Ministry of Revenue, may

make or cause to be made one or more copies thereof, and a document purporting to be certified by the Minister or a person thereunto authorized by the Minister to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have had if it had been proven in the ordinary way.

(4) No person shall hinder or molest or interfere with ^{Compliance} any person doing anything that he is authorized by this section to do or shall prevent or attempt to prevent any person doing any such thing, and notwithstanding any other law to the contrary, every person shall, unless he is unable to do so, do everything he is required by this section to do.

(5) Every person who has failed to comply with or has ^{Offence} contravened this section is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to a fine of \$25 for each day during which the default continues.

10. Until a different form is prescribed, the form of ^{Form of} affidavit prescribed by Ontario Regulation 251/73 made under *The Land Transfer Tax Act* shall be the form of <sup>R.S.O. 1970,
c. 235</sup> affidavit required by subsection 1 of section 4.

11. A person authorized to administer an oath under <sup>Administration of
oaths</sup> *The Land Titles Act* or *The Registry Act* may administer <sup>R.S.O. 1970,
cc. 234, 409</sup> an oath for any of the purposes of this Act.

12.—(1) Where any person responsible for the payment ^{Assessment} of tax fails to pay it as required under this Act, the Minister may make an assessment of the tax for which such person is responsible and which has not been paid.

(2) Where the Minister has made an assessment under <sup>Notice of
assessment</sup> subsection 1, he shall send by mail or by registered mail or deliver by personal service a notice of assessment to the person so assessed, and the amount of the assessment shall be remitted to the Minister by the person so assessed within thirty days from the date of mailing or delivery of the notice of assessment.

(3) Where the Minister has made an assessment under ^{Idem} subsection 1, the notice of assessment may provide that the amount assessed is payable forthwith.

(4) The Minister may, at any time he considers reasonable, assess or reassess any tax payable by any person under <sup>Assessment
from time
to time</sup> this Act.

Assessment
on
inspection

(5) Where it appears from an inspection, audit or examination of the books of account, records or documents of any person that this Act or the regulations have not been complied with, the person making the inspection, audit or examination shall calculate the tax payable in such manner and form and by such procedure as the Minister considers adequate and expedient, and the Minister shall assess the amount of the tax.

Notice of
assessment
under subs.
4 or 5

(6) The Minister shall send by mail or by registered mail or deliver by personal service a notice of the assessment made under subsection 4 or 5 to the person so assessed at his latest known address, and the notice may provide that the amount assessed is payable forthwith.

Liability
to tax not
affected

(7) Liability for tax is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

Minister
not
bound by
information

(8) The Minister is not bound by any information delivered by or on behalf of any person responsible for the payment of the tax and may, notwithstanding any information that has been delivered or if no information has been delivered, assess the tax payable under this Act.

Assessment
valid and
binding

(9) An assessment, subject to being varied or vacated on an objection or appeal and subject to a reassessment, shall be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto.

Idem

(10) The amount of any assessment is payable within the time required by the notice of assessment whether or not an objection or appeal from the assessment is made or taken.

Notice of
objection

13.—(1) Where a person objects to an assessment made under section 12 he may, within ninety days after the day of mailing or delivery by personal service of the notice of assessment, serve on the Minister a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts.

Service

(2) A notice of objection under this section shall be served by being sent by registered mail addressed to the Minister.

Recon-
sideration

(3) Upon receipt of a notice of objection, the Minister shall with all due despatch reconsider the assessment and vacate, confirm or vary the assessment or reassess, and he shall thereupon notify the person who has made the objection of his action by registered mail.

14.—(1) After the Minister has given the notification ^{Appeal} required by subsection 3 of section 13, a person who has served notice of objection under section 13 may appeal to the Supreme Court to have the assessment vacated or varied or reassessed, but no appeal under this section shall be instituted after the expiration of ninety days from the day on which notice has been mailed to such person under subsection 3 of section 13 and an appeal under this section shall not be made to the Divisional Court.

(2) An appeal to the Supreme Court shall be instituted ^{Appeal, how} by serving on the Minister a notice of appeal in duplicate ^{instituted} in the prescribed form and by filing a copy thereof with the Registrar of the Supreme Court or with the Local Registrar of the Supreme Court for the county, district or judicial district in which is situate the designated land the tax imposed on which is under appeal.

(3) A notice of appeal shall be served on the Minister by ^{Service} being sent by registered mail addressed to the Minister.

(4) The person appealing shall set out in his notice ^{Contents of notice of appeal} a statement of the allegations of fact and the appeal statutory provisions and reasons that he intends to submit in support of his appeal.

(5) After the service on him of a notice of appeal ^{Reply to notice of appeal} under this section, the Minister shall with all due despatch serve on the person appealing and file in the Supreme Court where the notice of appeal was filed a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such further allegations of fact and of such statutory provisions and reasons as he considers relevant.

(6) Upon the filing in the Supreme Court of the material ^{Matter deemed to action} referred to in subsection 5, the matter shall be deemed to be an action in the court, and the practice and procedure of the court, including the right of appeal and the practice and procedure relating to appeals, apply to every matter that is deemed to be an action under this subsection, and every judgment and order given or made in every such action may be enforced in the same manner and by the like process as a judgment or order given or made in an action commenced in the court.

(7) The court may dispose of an appeal by allowing it, ^{Disposition of appeal} by dismissing it, or by allowing it in part and directing the Minister to vacate the assessment, vary the assessment or reconsider the assessment and reassess as indicted by the judgement of the court.

Idem	(8) In delivering judgment disposing of an appeal, the court may order payment or refund of tax by the appellant or by the Treasurer, as the case may be, and may make such order as to costs as is considered proper.
Irregularities	(9) No assessment shall be vacated or varied on appeal by reason only of an irregularity, informality, omission or error on the part of any person in the observance of any directory provision of this Act.
Extension of time	(10) The time within which a notice of objection under subsection 1 of section 13 or a notice of appeal under subsection 1 of this section is to be served may be extended by the Minister if application for extension is made before expiration of the time for service of the notice of objection or notice of appeal, as the case may be.
Interest on unpaid tax	15. —(1) Where the tax imposed by this Act is not paid at the time provided for, interest on the unpaid tax shall be paid to the Treasurer at the rate of 9 per cent per annum or at such other rate as may be prescribed by the Lieutenant Governor in Council by regulation.
Application of payment	(2) Any payment received by the Treasurer or a collector on account of any tax under this Act shall first be applied to any interest payable on the tax with respect to which the payment is made, but this subsection does not apply to payments on account of any fine or penalty payable under this Act.
Deferral or remission of tax on non-residents	16. —(1) Where tax has been paid or may be payable on the registration of a conveyance of land to a non-resident person, and that non-resident person satisfies the Minister that the land was or is to be acquired for the purpose of residential, commercial or industrial development and for resale to persons who are not non-resident persons, the Minister may, with the approval of the Lieutenant Governor in Council, defer the payment of the tax, or remit the tax paid, on such conditions as to the use and development of the land or otherwise as are considered advisable and sufficient to ensure the development of the land as proposed and its conveyance to persons who are not non-resident persons, and any tax deferred or remitted under this subsection constitutes a first lien and charge in favour of Her Majesty in right of Ontario on the land so acquired or to be acquired, and the lien and charge shall be effective upon registration by the Minister of a notice of such lien and charge, and the Minister may discharge the lien and charge in whole or in part as the conditions that he has imposed are fulfilled.

(2) A deferral or remission under subsection 1 may not ^{Idem} exceed the amount by which the rate of tax imposed by subsection 2 of section 2 exceeds the rate of tax imposed by subsection 1 of section 2, but may otherwise be for all or any part of the tax.

(3) Where tax is deferred under subsection 1 upon conditions that are fulfilled, the amount of the tax so deferred ^{Deferred tax} is thereupon cancelled and no longer owing as tax under this Act, and where the conditions upon which any tax has been remitted under subsection 1 are not fulfilled, the tax so remitted thereupon becomes payable.

17. Where a conveyance is tendered for registration,

When tax
not payable
under this Act

- (a) after the 9th day of April, 1974 and before the 16th day of May, 1974, and is the result of an agreement that is proved to the satisfaction of the Minister to have been reduced to writing and executed by the parties to it before the 10th day of April, 1974; or
- (b) after the 15th day of May, 1974, and is the result of an agreement that is proved to the satisfaction of the Minister to have been reduced to writing and executed by the parties to it before the 10th day of April, 1974 and that has been filed with the Minister before the 16th day of May, 1974,

the tax payable by the person tendering the conveyance for registration shall be the tax provided for in *The Land Transfer Tax Act*, as amended by *The Land Transfer Tax Amendment Act, 1972*, notwithstanding the repeal of those Acts, and the tax provided for in this Act does not apply to the person tendering the conveyance for registration.

18.—(1) The Minister may make regulations,

Regula-
tions

- (a) prescribing any form required by this Act or that, in his opinion, will assist in the administration of this Act, and prescribing how and by whom any prescribed form shall be completed and what information it shall contain;
- (b) repealing Form 1 and substituting another Form therefor.

(2) The Lieutenant Governor in Council may make regulations,

- (a) exempting from tax any person tendering for registration any class of conveyance to which it is

determined that this Act was not intended to apply, or any conveyance to persons prescribed for the purpose of this clause;

- (b) providing for the collection of tax, the appointment of persons other than collectors to collect the tax, and establishing procedures for the collection of the tax;
- (c) providing for the refund of tax in whole or in part owing to special circumstances, and prescribing the terms and conditions under which such refund may be made;
- (d) authorizing or requiring the Deputy Minister of Revenue or any officer of the Ministry of Revenue to exercise any power or perform any duty conferred or imposed upon the Minister by this Act;
- (e) providing for the method of calculating and ascertaining the value of the consideration in any case or class of cases;
- (f) authorizing any person or persons, on such conditions and subject to such rules as may be specified, to exempt from or to refund the tax or any part thereof imposed by subsection 2 of section 2 any person tendering for registration any class of conveyance to which it is determined that this Act was not intended to apply, or any conveyance to any non-resident person;
- (g) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

Idem

- (3) A regulation is, if it so provides, effective with reference to a period before it was filed.

**Acts
repealed**

19. *The Land Transfer Tax Act*, being chapter 235 of the Revised Statutes of Ontario, 1970, and *The Land Transfer Tax Amendment Act*, 1972, being chapter 15, are repealed.

Commencement

20.—(1) Upon receiving Royal Assent, this Act shall be deemed to have come into force on the 10th day of April, 1974, and the tax imposed by this Act shall be levied and paid as herein provided notwithstanding that this Act receives Royal Assent after the 10th day of April, 1974.

Application

(2) Where any act or thing that is required by this Act is done or omitted to be done on or after the 10th day

of April, 1974 and before the day upon which this Act receives Royal Assent, the fact that this Act was not in force at the time the act or thing was done or omitted to be done shall not relieve any person from the liability to tax imposed by this Act or from liability to any penalty or offence provided for in this Act.

21. This Act may be cited as *The Land Transfer Tax* Short title
Act, 1974.

Form 1

The Land Transfer Tax Act, 1974

AFFIDAVIT OF RESIDENCE

IN THE MATTER OF THE CONVEYANCE OF.....

.....

.....

(insert brief description of land)

To.....
(insert names of all transferees)

I,.....of.....
(print name)

(print address)

MAKE OATH AND SAY THAT:

1. I am (place a clear mark within the square opposite that one of the following paragraphs that describes the capacity of the deponent):

(a) A person to whom or in trust for whom the land conveyed in the above-described conveyance is being conveyed

(b) One of the trustees named in the above-described conveyance to whom the land is being conveyed

(c) A transferee named in the above-described conveyance

(d) An agent authorized in writing to act for

.....who is a person described in
(insert name of principal)

paragraph.....above (insert only one of paragraph
(a), (b), or (c) above)

(e) The solicitor acting in this matter for

..... who is a person described in
(insert name of client)

paragraph..... above (insert only one of paragraph (a),
 (b) or (c) above);

and as such, I have personal knowledge of the facts herein deposed to.

2. None of the transferees to whom or in trust for whom the land conveyed in the above-described conveyance is being conveyed is, within the meaning of the Act, a non-resident person (strike out this paragraph if inapplicable).
 3. The following persons to whom or in trust for whom the land conveyed in the above-described conveyance is being conveyed are non-resident persons within the meaning of the Act.
-

(insert the name and place of residence—or in the case of a corporation, the place of incorporation—of any transferee who is a non-resident person. If space is insufficient, attach a list of those transferees who are non-resident persons.)

4. I have read and considered the definitions of "non-resident corporation" and "non-resident person" set out respectively in clauses f and g of subsection 1 of section 1 of the Act.

Sworn before me

in the

of

this

day of

19

}

A Commissioner, etc.

BILL 26

The Land Transfer Tax Act, 1974

1st Reading

April 9th, 1974

2nd Reading

3rd Reading

THE HON. A. K. MEEN
Minister of Revenue

(*Government Bill*)

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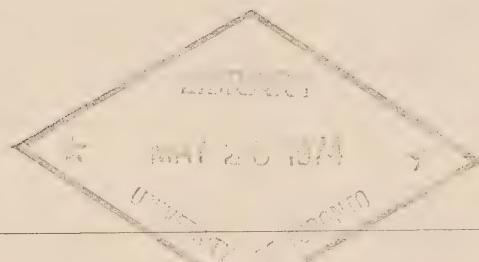
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BILL 26

Government Bill

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

The Land Transfer Tax Act, 1974



THE HON. A. K. MEEN
Minister of Revenue

(Reprinted as amended by the Committee of the Whole House)

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

This Bill repeals *The Land Transfer Tax Act* and *The Land Transfer Tax Amendment Act, 1972*, and imposes on the registration of the conveyance of land transferred to persons who are not resident in Canada a tax of 20 per cent of the value of the consideration for the transfer. For transfers to residents of Canada, the tax remains at three-tenths of 1 per cent of the first \$35,000 of the value of the consideration for the transfer and six-tenths of 1 per cent on the remainder.

During the period between the introduction of this Bill and the giving of Royal Assent to it, a special lien for the tax is created. It will automatically expire on the 30th day of September, 1974 unless a notice of lien is registered against the land within that time. Although applicable to all taxes imposed between the introduction of the Bill and its receiving Royal Assent, the lien will only arise on the Bill receiving Royal Assent.

In view of the increased liability to tax imposed by the Bill and the differentiation between residents and non-residents of Canada, many new definitions are contained in the Bill that were not in the repealed Acts, and many administrative provisions have been added that are similar to those contained in other revenue statutes of the Province.

BILL 26**1974****The Land Transfer Tax Act, 1974**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Interpre-
tation

- (a) “collector” means any land registrar to whom any conveyance to which this Act applies is tendered for registration;
- (b) “convey” includes the granting, assigning, releasing, surrendering, leasing or disposing of land in Ontario, agreeing to sell land in Ontario, or the giving of an option upon or with respect to any land in Ontario, whether the effect of any of the foregoing is to bring into existence an interest of any kind in land or is only for the purpose of giving effect to or formal recognition to any interest of whatsoever kind that theretofore existed in land, but “convey” does not include any transfer of land for the purpose only of securing a debt or loan, or any transfer by a creditor for the purpose only of returning land that had been used as security for a debt or loan, or any transfer of land by virtue of which there is a change in the legal ownership of the land without any change in its beneficial ownership;
- (c) “conveyance” includes any instrument or writing by which land is conveyed and includes a final order of foreclosure under any mortgage or charge affecting land;
- (d) “land” includes lands, tenements and hereditaments and any estate, right or interest therein, a leasehold interest or estate, the interest of an optionee, the interest of a purchaser under an agreement to sell land, or goodwill attributable to the location

of land or to the existence thereon of any building or fixture, and fixtures;

- (e) "Minister" means the Minister of Revenue;
- (f) "non-resident corporation" means a corporation incorporated, formed or otherwise organized in Canada or elsewhere,
 - (i) that has issued or allotted shares to which are attached 50 per cent or more of the voting rights ordinarily exercisable at meetings of the shareholders of the corporation and that are owned by one or more individuals who are non-resident persons, or by one or more corporations incorporated, formed or organized elsewhere than in Canada, or by any combination of such individuals and corporations,
 - (ii) that has issued or allotted shares to which are attached 25 per cent or more of the voting rights ordinarily exercisable at meetings of the shareholders of the corporation and that are owned by any one individual who is a non-resident person, or by any one corporation incorporated, formed, or organized elsewhere than in Canada, but this subclause does not apply where it is established to the satisfaction of the Minister that such individual or corporation does not in fact exercise control, directly or indirectly, over the corporation that has issued or allotted to such individual or corporation shares to which are attached 25 per cent or more of the voting rights ordinarily exercisable at meetings of the shareholders of the corporation,
 - (iii) one-half or more of the directors of which, or of the persons occupying the position of director by whatever name called, are individuals who are non-resident persons,
 - (iv) without share capital and one-half or more of the members of which are non-resident persons, or
 - (v) that is controlled directly or indirectly by one or more non-resident persons, including a non-resident corporation within the definition contained in the provisions of this clause other than this subclause;

(g) “non-resident person” means,

- (i) an individual who is not ordinarily resident in Canada or who, if ordinarily resident in Canada, is neither a Canadian citizen nor an individual who has been lawfully admitted to Canada for permanent residence in Canada;
- (ii) a partnership, syndicate, association or other organization of whatsoever kind of which one-half or more of the members are non-resident persons within the meaning of subclause i, iii or iv or in which interests representing in value 50 per cent or more of the total value of the partnership property are beneficially owned by non-resident persons within the meaning of subclause i, iii or iv;
- (iii) a trust established by a non-resident person within the meaning of subclause i, ii or iv or in which non-resident persons within the meaning of subclause i, ii or iv have 50 per cent or more of the beneficial interests in the corpus of the trust or in the income arising therefrom, and “trust” includes the trustees under such a trust in their capacity as the trustees thereof, or
- (iv) a non-resident corporation;

(h) “prescribed” means prescribed by regulations made under this Act;

(i) “tax” means the tax imposed by this Act;

(j) “transferee” includes a person to whom land is conveyed and any person whose interest in land is increased, created or given effect to as the result of a conveyance;

(k) “transferor” includes any person making a conveyance of land to a transferee;

(l) “Treasurer” means the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs;

(m) “value of the consideration” includes,

- (i) moneys paid in cash,

- (ii) the value of any property or security exchanged for the conveyance of land,
- (iii) the value of any encumbrance, charge or other liability to which the land being conveyed is subject at the time of registration, or
- (iv) in the case of a final order of foreclosure under any mortgage or charge affecting land, the amount owed under the mortgage at the time it was foreclosed, including principal, interest and all costs and expenses, other than municipal taxes, secured by the mortgage and owing at that time.

Control defined

(2) For the purposes of clause *f* of subsection 1, "control" means control by another corporation, individual or trust that is in fact exercising effective control either directly or indirectly and either through the holding of shares of the corporation or of any other corporation or through the holding of a significant portion of any class of shares of the corporation or of the outstanding debt of the corporation or of any shareholder or member of the corporation, or by any other means whether of a like or different nature.

Ordinarily resident defined

 (3) For the purpose of clause *g* of subsection 1, an individual shall be considered to be ordinarily resident in Canada if, at the time the expression is being applied,

- (a) he has been lawfully admitted to Canada for permanent residence in Canada;
- (b) he has sojourned in Canada during the next preceding 24 months for a period of, or periods the aggregate of which is, 366 days or more;
- (c) he is a member of the Canadian Forces required to reside outside Canada;
- (d) he is an ambassador, minister, high commissioner, officer or servant of Canada, or is an agent-general, officer or servant of a province of Canada, and resided in Canada immediately prior to appointment or employment by Canada or a province of Canada or is entitled to receive representation allowances;
- (e) he is performing services in a country other than Canada under an international development assistance program of the Government of Canada that is

prescribed for the purposes of paragraph *d* of subsection 1 of section 250 of the *Income Tax Act (Canada)*,<sup>1970-71,
c. 63 (Can.)</sup> and resided in Canada at any time in the three month period preceding the day on which such services commenced; or

- (f) he resides outside Canada and is the spouse or child of, and is living with, an individual described in clause *c*, *d* or *e*. 

2.—(1) Every person who tenders for registration in Ontario a conveyance whereby any land is conveyed to or in trust for any transferee who is not a non-resident person shall, before the conveyance is registered, pay a tax computed at the rate of three-tenths of 1 per cent of the value of the consideration for the conveyance up to and including \$35,000, and at the rate of six-tenths of 1 per cent upon the remainder of the value of the consideration.

(2) Every person who tenders for registration in Ontario^{Idem} a conveyance whereby any land is conveyed to or in trust for any transferee who is a non-resident person shall, before the conveyance is registered, pay a tax computed at the rate of 20 per cent of the value of the consideration for the conveyance.

(3) Where the same conveyance may be registered in more than one office under the registry system, in more than one office under the land titles system, or under both the registry system and the land titles system, the tax is payable only once in respect of the first of such conveyances tendered for registration.

(4) No tax is payable where the only transferee in a^{Exemption} conveyance that is tendered for registration is the Crown or a Crown agency within the meaning of *The Crown Agency*<sup>R.S.O. 1970,
c. 100</sup> *Act*.

(5) Where the Minister or some person authorized by him in writing to do so has indicated over his signature upon any conveyance that such tax as is payable has been paid, the conveyance may be registered without the payment of tax to the collector and without the production of the affidavits required by this Act, but the Minister or a person acting under his authority shall make the certification provided for by this subsection only when he is satisfied that all tax is paid or that security for the payment of the tax has been furnished to the Minister or to a collector in a form and of a kind that is acceptable to the Minister.

Returns by
collector

3. Every collector shall, in the first week of each month or at such other time as the Minister may from time to time require in writing, send to the Minister a statement of the amount of tax collected by him during the previous month or during such other period of time as the Minister shall in writing specify, and the collector shall pay over the amount of such tax to the Treasurer for the uses of Ontario.

Contents
of
affidavit
as to
consideration

4.—(1) There shall be filed with the collector and attached by him to the conveyance to which it relates an affidavit in the prescribed form setting out the true value of the consideration for the conveyance, the true amount in cash and the value of any property or security included in the value of the consideration, the amount or value of any lien or encumbrance subject to which the conveyance was made, and such other information as the Minister may prescribe to be disclosed in the affidavit.

Affidavit
by whom
to be made

(2) The affidavit required by subsection 1 may be made by the person making the conveyance or by the transferee or by any person acting for either of them under a power of attorney or as an agent authorized in writing so to act, or by the solicitor for the person making the conveyance or for the transferee, or by some other person authorized in writing by the Minister to make the affidavit.

Affidavit
as to
residence

(3) In addition to the affidavit required by subsection 1, there shall be filed with the collector and attached by him to the conveyance to which it relates an affidavit in Form 1 or in such other form as is prescribed, and the affidavit shall be made by,

- (a) the transferee to whom or in trust for whom any land is conveyed;
- (b) a trustee to whom any land is conveyed and who is shown as a trustee in the conveyance;
- (c) the transferee named in the conveyance;
- (d) an agent of any person referred to in clause *a*, *b* or *c*, if the agent is authorized in writing to make the affidavit; or
- (e) the solicitor acting in the transaction as the solicitor for any person referred to in clause *a*, *b* or *c*,

and such affidavit shall state whether the transferee to whom the land is being conveyed is a non-resident person or the trustee for a non-resident person, and shall state such other information as is required in order to complete the affidavit.

(4) The affidavit required by subsection 1 or 3 shall state what to contain that the person making it has personal knowledge of the facts stated in it, and there shall be filed with the affidavit the power of attorney or written authorization, if any, referred to in subsection 2 or 3.

(5) If the collector is not satisfied that the affidavit required by subsection 1 sets out the true value of the consideration for the conveyance, he may refuse to register the conveyance to which the affidavit relates until the Minister has signified over his signature that he is satisfied that the value of the consideration stated in the affidavit is the true value of the consideration.

(6) Where a conveyance is tendered for registration without the affidavit required by subsection 3, tax is payable at the rate provided in subsection 2 of section 2, and the collector shall not register the conveyance until such tax is paid, but if it is subsequently established to the satisfaction of the Minister that, had the affidavit required by subsection 3 been furnished to the collector, tax would have been payable as provided in subsection 1 of section 2, the Minister may refund the amount paid under this subsection in excess of the tax provided for in subsection 1 of section 2.

5.—(1) Where the right of the collector to require payment of the tax is disputed by the person tendering a conveyance for registration, the tax may be paid under protest and the collector shall give a receipt in writing signed by him for the amount paid and stating that it was paid under protest, and he shall thereupon refer the matter for the decision of the Minister or of such official as the Minister appoints, who may order the refund of the tax or any part thereof to the person who paid it.

(2) In any dispute over the liability to tax of any person, the Minister may, after the tax has been paid, and if the dispute involves the interpretation of a provision of this Act, or involves an issue of law in which no facts are in dispute, or involves the proper inference to be drawn from facts that are not in dispute, agree in writing with the disputing party as to the undisputed facts and thereafter apply to the Supreme Court to have the issue in dispute determined, and if the Minister does not make the application within six weeks of the date upon which the undisputed facts have been agreed upon in writing, the other party to the dispute may apply to the court to have the issue determined.

6.—(1) Upon this Act receiving Royal Assent, every tax payable under this Act as a result of the tender of any tax

conveyance for registration after the 9th day of April, 1974 and before the day on which this Act receives Royal Assent that was not paid as herein provided for shall form a special lien upon the land conveyed by any such conveyance, and the special lien shall be in favour of Her Majesty in right of Ontario and has complete priority over every encumbrance of whatsoever kind that affects the land and that arose or came into existence on or after the 9th day of April, 1974 as part of or subsequent to the transaction or series of transactions that resulted in the tender for registration of the conveyance evidencing or carrying into effect the transaction or series of transactions.

**Expiry
of
lien**

(2) The special lien conferred on the Crown by this section expires on the 30th day of September, 1974, unless prior to the expiry of the special lien, there is registered against the land affected by the special lien a notice of lien in prescribed form.

**Notice of
intended
sale**

(3) Before the issue of a warrant under subsection 4, the Minister shall send by mail or by registered mail, or deliver by personal service, a notice to all persons who have an interest, encumbrance or charge registered under the land titles system or the registry system against the land for the sale of which the warrant is to be issued that he intends to have the land that is subject to the special lien conferred by this Act sold pursuant to subsection 4, and such notice shall be given not less than thirty days or more than sixty days before the issue of the warrant, and shall be sent, in the case of a notice sent by mail, to the latest known address of each person to whom notice is to be given and to such other address as, in the opinion of the Minister, may be more likely to bring the notice to the person's attention.

**Recovery
of lien
by sale**

(4) Subject to subsection 3, the Minister may, by his warrant directed to the sheriff of the county, district or judicial district in which is situate any land that is subject to the special lien conferred by this Act, require the sheriff to sell the land within six months or such longer period as is stated in the warrant, and the sheriff, upon receiving the warrant, shall proceed within the period specified to sell the land in the same manner as for a sale under a writ of execution issued out of the Supreme Court, and any person purchasing from the sheriff at such a sale shall take good title to the land free and clear of all encumbrances and claims of any kind of all persons whatsoever that do not have priority over the special lien but subject to all the rights and encumbrances of persons who have an interest in the land that have priority over the special lien.

(5) The proceeds of sale received by the sheriff from a sale^{Idem} under a warrant authorized by subsection 4 shall be applied first to pay the costs and expenses of the sheriff in conducting the sale and next in payment of the amount of tax that was a special lien on the land conferred by this Act, and any surplus thereafter remaining shall be paid, in order of their priorities, to those whose rights in the land were subject to the special lien, and, if the order of those priorities cannot be established by the sheriff, shall be paid into court to be dealt with as the court shall direct.

(6) At any time prior to a sale authorized by subsection 4, any person interested in the land affected by the special lien conferred by this Act may pay to the Minister a sum sufficient to discharge the special lien, and if the special lien is discharged by some person having an encumbrance against the land, the amount accepted by the Minister may be added to that person's encumbrance and shall, for all purposes and in every court, thereafter be treated as part of the encumbrance and shall bear interest at the rate provided for in the encumbrance and shall be collectable in the same way as the encumbrance is enforceable.

(7) Upon such conditions as he may impose, the Minister^{Waiver of lien} may abandon, postpone, release or waive with respect to all or any part of any land any special lien conferred by this Act.

7.—(1) Every person who knowingly contravenes any provision of this Act or who knowingly makes an affidavit required by this Act that falsely discloses the value of the consideration for any conveyance of land or falsely states that a person who is a non-resident person is not a non-resident person, is guilty of an offence and on summary conviction is liable to a fine of not less than the amount of tax that was not paid to the collector as provided for in this Act plus an amount of not less than \$50 and not more than \$1,000.

(2) For the purpose of any proceeding taken under this Act, the facts necessary to establish compliance on the part of the Minister with this Act as well as the failure of any person to comply with the requirements of this Act shall, unless evidence to the contrary satisfactory to the court is adduced, be sufficiently proved in any court of law by affidavit of the Minister or of any officer of the Ministry of Revenue.

(3) An information in respect of an offence under this Act shall be laid within six years of the time when the matter of the information arose.

Refund

8.—(1) Where a person has paid an amount under this Act as tax that is not payable as tax under this Act, the Minister may, upon receipt of satisfactory evidence that the amount was wrongly paid, authorize the Treasurer to refund such amount or any part thereof, but no refund shall be made unless it is applied for within three years after the date of the payment of any amount that is alleged not to have been payable as tax under this Act.

Idem

(2) Where a conveyance has been tendered for registration that conveys land both to non-resident persons and to persons who are not non-resident persons, the Minister may refund to the persons who are not non-resident persons an amount equal to the difference between,

- (a) the amount that would result from the application of the rates of tax in subsection 1 of section 2 to the value of the consideration attributable in the opinion of the Minister to the land conveyed to persons who are not non-resident persons; and
- (b) the amount of tax paid on the value of the consideration attributable in the opinion of the Minister to land conveyed to persons who are not non-resident persons,

but no refund under this subsection shall be made if the land is held in joint tenancy by the non-resident person and the persons who are not non-resident persons or if the Minister is of the opinion that the land conveyed to persons who are not non-resident persons cannot readily be distinguished from the land conveyed to non-resident persons.

Investigation

9.—(1) Any person thereunto authorized by the Minister for any purpose related to the administration or enforcement of this Act may at all reasonable times enter into any premises or place where any business is carried on or any property is kept or where anything is done in connection with any business or where any books or records are or should be kept and,

- (a) audit or examine the books and records and any account, voucher, letter, telegram or other document that relates or may relate to the information that is or should be in the books or records or to the amount of tax payable under this Act;

- (b) examine property described in any conveyance or any property, process or matter an examination of which may, in his opinion, assist him in determining the accuracy of any affidavit required by this Act or in ascertaining the information that is or should be in the books or records or in such affidavit, or the amount of any tax payable under this Act;
- (c) require any officer, director, agent or representative of a transferee a conveyance to whom has been registered as a result of which there may be a possible liability to pay tax under this Act, and any person on the premises to give him all reasonable assistance with his audit or examination and to answer all questions relating to the audit or examination either orally or, if he so requires, in writing, on oath or by statutory declaration and, for that purpose, he may require such person to attend at the premises or place with him; and
- (d) if during the course of any audit or examination it appears to him that there has been a violation of this Act or the regulations made under this Act, seize and take away any of the records, books, accounts, vouchers, letters, telegrams and other documents and retain them until they are produced in any court proceedings.

(2) The Minister may, for any purpose relating to the administration or enforcement of this Act, by registered letter or by a demand served personally, require from any person any information or additional information, or the production, or production on oath, of any books, letters, accounts, invoices, statements (financial or otherwise) or other documents within such reasonable time as is stipulated therein, provided that, in the opinion of the Minister or of the person authorized by him, it is necessary to make the demand in order to determine the liability or possible liability to tax under this Act.

(3) Where a book, record or other document has been seized, examined or produced under this section, the person by whom it is seized or examined or to whom it is produced, or any officer of the Ministry of Revenue, may make or cause to be made one or more copies thereof, and a document purporting to be certified by the Minister or a person thereunto authorized by the Minister to be a copy

made pursuant to this section is admissible in evidence and has the same probative force as the original document would have had if it had been proven in the ordinary way.

Compliance (4) No person shall hinder or molest or interfere with any person doing anything that he is authorized by this section to do or shall prevent or attempt to prevent any person doing any such thing, and notwithstanding any other law to the contrary, every person shall, unless he is unable to do so, do everything he is required by this section to do.

Offence (5) Every person who has failed to comply with or has contravened this section is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to a fine of \$25 for each day during which the default continues.

Form of affidavit **10.** Until a different form is prescribed, the form of affidavit prescribed by Ontario Regulation 251/73 made under *The Land Transfer Tax Act* shall be the form of affidavit required by subsection 1 of section 4.

Administration of oaths **11.** A person authorized to administer an oath under *The Land Titles Act* or *The Registry Act* may administer an oath for any of the purposes of this Act.

Assessment **12.—(1)** Where any person responsible for the payment of tax fails to pay it as required under this Act, the Minister may make an assessment of the tax for which such person is responsible and which has not been paid.

Notice of assessment (2) Where the Minister has made an assessment under subsection 1, he shall send by mail or by registered mail or deliver by personal service a notice of assessment to the person so assessed, and the amount of the assessment shall be remitted to the Minister by the person so assessed within thirty days from the date of mailing or delivery of the notice of assessment.

Idem (3) Where the Minister has made an assessment under subsection 1, the notice of assessment may provide that the amount assessed is payable forthwith.

Assessment from time to time (4) The Minister may, at any time he considers reasonable, assess or reassess any tax payable by any person under this Act.

(5) Where it appears from an inspection, audit or examination of the books of account, records or documents of any person that this Act or the regulations have not been complied with, the person making the inspection, audit or examination shall calculate the tax payable in such manner and form and by such procedure as the Minister considers adequate and expedient, and the Minister shall assess the amount of the tax.

(6) The Minister shall send by mail or by registered mail or deliver by personal service a notice of the assessment made under subsection 4 or 5 to the person so assessed at his latest known address, and the notice may provide that the amount assessed is payable forthwith.

(7) Liability for tax is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

(8) The Minister is not bound by any information delivered by or on behalf of any person responsible for the payment of the tax and may, notwithstanding any information that has been delivered or if no information has been delivered, assess the tax payable under this Act.

(9) An assessment, subject to being varied or vacated on an objection or appeal and subject to a reassessment, shall be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto.

(10) The amount of any assessment is payable within the time required by the notice of assessment whether or not an objection or appeal from the assessment is made or taken.

13.—(1) Where a person objects to an assessment made under section 12 he may, within ninety days after the day of mailing or delivery by personal service of the notice of assessment, serve on the Minister a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts.

(2) A notice of objection under this section shall be served by being sent by registered mail addressed to the Minister.

(3) Upon receipt of a notice of objection, the Minister shall with all due despatch reconsider the assessment and vacate, confirm or vary the assessment or reassess, and he shall thereupon notify the person who has made the objection of his action by registered mail.

Appeal

14.—(1) After the Minister has given the notification required by subsection 3 of section 13, a person who has served notice of objection under section 13 may appeal to the Supreme Court to have the assessment vacated or varied or reassessed, but no appeal under this section shall be instituted after the expiration of ninety days from the day on which notice has been mailed to such person under subsection 3 of section 13 and an appeal under this section shall not be made to the Divisional Court.

Appeal,
how
instituted

(2) An appeal to the Supreme Court shall be instituted by serving on the Minister a notice of appeal in duplicate in the prescribed form and by filing a copy thereof with the Registrar of the Supreme Court or with the Local Registrar of the Supreme Court for the county, district or judicial district in which is situate the designated land the tax imposed on which is under appeal.

Service

(3) A notice of appeal shall be served on the Minister by being sent by registered mail addressed to the Minister.

Contents
of notice of
appeal

(4) The person appealing shall set out in his notice of appeal a statement of the allegations of fact and the statutory provisions and reasons that he intends to submit in support of his appeal.

Reply to
notice of
appeal

(5) After the service on him of a notice of appeal under this section, the Minister shall with all due despatch serve on the person appealing and file in the Supreme Court where the notice of appeal was filed a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such further allegations of fact and of such statutory provisions and reasons as he considers relevant.

Matter
deemed
action

(6) Upon the filing in the Supreme Court of the material referred to in subsection 5, the matter shall be deemed to be an action in the court, and the practice and procedure of the court, including the right of appeal and the practice and procedure relating to appeals, apply to every matter that is deemed to be an action under this subsection, and every judgment and order given or made in every such action may be enforced in the same manner and by the like process as a judgment or order given or made in an action commenced in the court.

Disposition
of appeal

(7) The court may dispose of an appeal by allowing it, by dismissing it, or by allowing it in part and directing the Minister to vacate the assessment, vary the assessment or reconsider the assessment and reassess as indicated by the judgment of the court.

(8) In delivering judgment disposing of an appeal, the court may order payment or refund of tax by the appellant or by the Treasurer, as the case may be, and may make such order as to costs as is considered proper.

(9) No assessment shall be vacated or varied on appeal by reason only of an irregularity, informality, omission or error on the part of any person in the observance of any directory provision of this Act.

(10) The time within which a notice of objection under subsection 1 of section 13 or a notice of appeal under subsection 1 of this section is to be served may be extended by the Minister if application for extension is made before expiration of the time for service of the notice of objection or notice of appeal, as the case may be.

15.—(1) Where the tax imposed by this Act is not paid at the time provided for, interest on the unpaid tax shall be paid to the Treasurer at the rate of 9 per cent per annum or at such other rate as may be prescribed by the Lieutenant Governor in Council by regulation but no interest is payable for any period of time prior to the day upon which this Act receives Royal Assent.

(2) Any payment received by the Treasurer or a collector on account of any tax under this Act shall first be applied to any interest payable on the tax with respect to which the payment is made, but this subsection does not apply to payments on account of any fine or penalty payable under this Act.

16.—(1) Where tax has been paid or may be payable on the registration of a conveyance of land to a non-resident person, and that non-resident person satisfies the Minister that the land was or is to be acquired for the purpose of residential, commercial or industrial development and for resale to persons who are not non-resident persons, the Minister may, with the approval of the Lieutenant Governor in Council, defer the payment of the tax, or remit the tax paid, on such conditions as to the use and development of the land or otherwise as are considered advisable and sufficient to ensure the development of the land as proposed and its conveyance to persons who are not non-resident persons, and any tax deferred or remitted under this subsection constitutes a first lien and charge in favour of Her Majesty in right of Ontario on the land so acquired or to be acquired, and the lien and charge shall be effective upon registration by the Minister of a notice of such lien and charge, and the Minister may discharge the lien and charge in

whole or in part as the conditions that he has imposed are fulfilled.

Idem

(2) A deferral or remission under subsection 1, or a rebate under subsection 4, may not exceed the amount by which the rate of tax imposed by subsection 2 of section 2 exceeds the rate of tax imposed by subsection 1 of section 2, but may otherwise be for all or any part of the tax.

Deferred
tax
cancelled

(3) Where tax is deferred under subsection 1 upon conditions that are fulfilled, the amount of the tax so deferred is thereupon cancelled and no longer owing as tax under this Act, and where the conditions upon which any tax has been remitted under subsection 1 are not fulfilled, the tax so remitted thereupon becomes payable.

 Rebate
after
foreclosure

(4) Where tax is paid under subsection 2 of section 2 as the result of the tender for registration of a final order of foreclosure under a mortgage or charge affecting land, and where the mortgagee or chargee who acquires the beneficial interest in the land by virtue of the final order of foreclosure sells, within three years after the date on which the final order of foreclosure was given, all or any part of the land so acquired to a person who is not a non-resident person, the Minister may, subject to subsection 2, rebate to the mortgagee or chargee the tax that was paid on the tender for registration of the final order of foreclosure and that is, in the opinion of the Minister, referable to the value of the consideration for the final order of foreclosure attributable to the portion of the land sold, and in addition to the amount of the rebate, the Minister may authorize payment to the mortgagee or chargee to whom the rebate is made of interest on the amount rebated at the rate of 4 per cent per annum or at such other rate as may be prescribed by the Lieutenant Governor in Council by regulation.

 When tax
not payable
under this Act

17. Where a conveyance is tendered for registration,

- (a) after the 9th day of April, 1974 and before the 16th day of May, 1974, and is the result of an agreement that is proved to the satisfaction of the Minister to have been reduced to writing and executed by the parties to it before the 10th day of April, 1974; or
- (b) after the 15th day of May, 1974, and is the result of an agreement that is proved to the satisfaction of the Minister to have been reduced to writing and executed by the parties to it before the 10th day of

April, 1974 and that has been filed with the Minister before the 16th day of May, 1974,

the tax payable by the person tendering the conveyance for registration shall be the tax provided for in *The Land Transfer Tax Act*, as amended by *The Land Transfer Tax Amendment Act, 1972*, notwithstanding the repeal of those Acts, and the tax provided for in this Act does not apply to the person tendering the conveyance for registration.

R.S.O. 1970.
c. 235
1972, c. 15

18.—(1) The Minister may make regulations,

Regula-
tions

- (a) prescribing any form required by this Act or that, in his opinion, will assist in the administration of this Act, and prescribing how and by whom any prescribed form shall be completed and what information it shall contain;
- (b) repealing Form 1 and substituting another Form therefor.

(2) The Lieutenant Governor in Council may make regula-^{Idem} tions,

- (a) exempting from tax any person tendering for registration any class of conveyance to which it is determined that this Act was not intended to apply, or any conveyance to persons prescribed for the purpose of this clause;
- (b) providing for the collection of tax, the appointment of persons other than collectors to collect the tax, and establishing procedures for the collection of the tax;
- (c) providing for the refund of tax in whole or in part owing to special circumstances, and prescribing the terms and conditions under which such refund may be made;
- (d) authorizing or requiring the Deputy Minister of Revenue or any officer of the Ministry of Revenue to exercise any power or perform any duty conferred or imposed upon the Minister by this Act;
- (e) providing for the method of calculating and ascertaining the value of the consideration in any case or class of cases;
- (f) authorizing any person or persons, on such conditions and subject to such rules as may be specified,

to exempt from the tax or any part thereof imposed by subsection 2 of section 2, or to refund such tax or any part thereof to, any person tendering for registration any class of conveyance to which it is determined that this Act was not intended to apply, or any conveyance to any non-resident person;

- (g) providing for the payment of interest on any refund or rebate of tax authorized by this Act or the regulations, and prescribing the rate of such interest and the method by which it is to be calculated;
- (h) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

Idem (3) A regulation is, if it so provides, effective with reference to a period before it was filed.

Acts repealed **19.** *The Land Transfer Tax Act*, being chapter 235 of the Revised Statutes of Ontario, 1970, and *The Land Transfer Tax Amendment Act, 1972*, being chapter 15, are repealed.

Commencement **20.**—(1) Upon receiving Royal Assent, this Act shall be deemed to have come into force on the 10th day of April, 1974, and the tax imposed by this Act shall be levied and paid as herein provided notwithstanding that this Act receives Royal Assent after the 10th day of April, 1974.

Application (2) Where any act or thing that is required by this Act is done or omitted to be done on or after the 10th day of April, 1974 and before the day upon which this Act receives Royal Assent, the fact that this Act was not in force at the time the act or thing was done or omitted to be done shall not relieve any person from the liability to tax imposed by this Act or from liability to any penalty or offence provided for in this Act.

Short title **21.** This Act may be cited as *The Land Transfer Tax Act, 1974*.

Form 1

The Land Transfer Tax Act, 1974

AFFIDAVIT OF RESIDENCE

IN THE MATTER OF THE CONVEYANCE OF.....

.....
(insert brief description of land)

To
(insert names of all transferees)

I, of
(print name)

.....
(print address)

MAKE OATH AND SAY THAT:

1. I am (place a clear mark within the square opposite that one of the following paragraphs that describes the capacity of the deponent):

(a) A person to whom or in trust for whom the land conveyed in the above-described conveyance is being conveyed

(b) One of the trustees named in the above-described conveyance to whom the land is being conveyed

(c) A transferee named in the above-described conveyance

(d) An agent authorized in writing to act for

..... who is a person described in
(insert name of principal)

paragraph above (insert only one of paragraph (a), (b), or (c) above)

(e) The solicitor acting in this matter for

..... who is a person described in
(insert name of client)

paragraph above (insert only one of paragraph (a), (b) or (c) above);

and as such, I have personal knowledge of the facts herein deposed to.

2. None of the transferees to whom or in trust for whom the land conveyed in the above-described conveyance is being conveyed is, within the meaning of the Act, a non-resident person (strike out this paragraph if inapplicable).
3. The following persons to whom or in trust for whom the land conveyed in the above-described conveyance is being conveyed are non-resident persons within the meaning of the Act.
-
.....
.....

(insert the name and place of residence—or in the case of a corporation, the place of incorporation—of any transferee who is a non-resident person. If space is insufficient, attach a list of those transferees who are non-resident persons.)

4. I have read and considered the definitions of “non-resident corporation” and “non-resident person” set out respectively in clauses *f* and *g* of subsection 1 of section 1 of the Act.

Sworn before me }
in the }
of }
this }
day of }
 } 19

A Commissioner, etc.

The Land Transfer Tax Act, 1974

1st Reading

April 9th, 1974

2nd Reading

April 22nd, 1974

3rd Reading

THE HON. A. K. MEEN
Minister of Revenue

(Reprinted as amended by the
Committee of the Whole House

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Government
Publications

4TH SESSION, 29TH LEGISLATURE, ONTARIO
23 ELIZABETH II, 1974

The Land Transfer Tax Act, 1974

THE HON. A. K. MEEN
Minister of Revenue



TORONTO
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BILL 26**1974****The Land Transfer Tax Act, 1974**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,Interpre-
tation

- (a) “collector” means any land registrar to whom any conveyance to which this Act applies is tendered for registration;
- (b) “convey” includes the granting, assigning, releasing, surrendering, leasing or disposing of land in Ontario, agreeing to sell land in Ontario, or the giving of an option upon or with respect to any land in Ontario, whether the effect of any of the foregoing is to bring into existence an interest of any kind in land or is only for the purpose of giving effect to or formal recognition to any interest of whatsoever kind that theretofore existed in land, but “convey” does not include any transfer of land for the purpose only of securing a debt or loan, or any transfer by a creditor for the purpose only of returning land that had been used as security for a debt or loan, or any transfer of land by virtue of which there is a change in the legal ownership of the land without any change in its beneficial ownership;
- (c) “conveyance” includes any instrument or writing by which land is conveyed and includes a final order of foreclosure under any mortgage or charge affecting land;
- (d) “land” includes lands, tenements and hereditaments and any estate, right or interest therein, a leasehold interest or estate, the interest of an optionee, the interest of a purchaser under an agreement to sell land, or goodwill attributable to the location

of land or to the existence thereon of any building or fixture, and fixtures;

- (e) "Minister" means the Minister of Revenue;
- (f) "non-resident corporation" means a corporation incorporated, formed or otherwise organized in Canada or elsewhere,
 - (i) that has issued or allotted shares to which are attached 50 per cent or more of the voting rights ordinarily exercisable at meetings of the shareholders of the corporation and that are owned by one or more individuals who are non-resident persons, or by one or more corporations incorporated, formed or organized elsewhere than in Canada, or by any combination of such individuals and corporations,
 - (ii) that has issued or allotted shares to which are attached 25 per cent or more of the voting rights ordinarily exercisable at meetings of the shareholders of the corporation and that are owned by any one individual who is a non-resident person, or by any one corporation incorporated, formed, or organized elsewhere than in Canada, but this subclause does not apply where it is established to the satisfaction of the Minister that such individual or corporation does not in fact exercise control, directly or indirectly, over the corporation that has issued or allotted to such individual or corporation shares to which are attached 25 per cent or more of the voting rights ordinarily exercisable at meetings of the shareholders of the corporation,
 - (iii) one-half or more of the directors of which, or of the persons occupying the position of director by whatever name called, are individuals who are non-resident persons,
 - (iv) without share capital and one-half or more of the members of which are non-resident persons, or
 - (v) that is controlled directly or indirectly by one or more non-resident persons, including a non-resident corporation within the definition contained in the provisions of this clause other than this subclause;

(g) “non-resident person” means,

- (i) an individual who is not ordinarily resident in Canada or who, if ordinarily resident in Canada, is neither a Canadian citizen nor an individual who has been lawfully admitted to Canada for permanent residence in Canada;
- (ii) a partnership, syndicate, association or other organization of whatsoever kind of which one-half or more of the members are non-resident persons within the meaning of subclause i, iii or iv or in which interests representing in value 50 per cent or more of the total value of the partnership property are beneficially owned by non-resident persons within the meaning of subclause i, iii or iv;
- (iii) a trust established by a non-resident person within the meaning of subclause i, ii or iv or in which non-resident persons within the meaning of subclause i, ii or iv have 50 per cent or more of the beneficial interests in the corpus of the trust or in the income arising therefrom, and “trust” includes the trustees under such a trust in their capacity as the trustees thereof, or
- (iv) a non-resident corporation;

(h) “prescribed” means prescribed by regulations made under this Act;

(i) “tax” means the tax imposed by this Act;

(j) “transferee” includes a person to whom land is conveyed and any person whose interest in land is increased, created or given effect to as the result of a conveyance;

(k) “transferor” includes any person making a conveyance of land to a transferee;

(l) “Treasurer” means the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs;

(m) “value of the consideration” includes,

- (i) moneys paid in cash,

- (ii) the value of any property or security exchanged for the conveyance of land,
- (iii) the value of any encumbrance, charge or other liability to which the land being conveyed is subject at the time of registration, or
- (iv) in the case of a final order of foreclosure under any mortgage or charge affecting land, the amount owed under the mortgage at the time it was foreclosed, including principal, interest and all costs and expenses, other than municipal taxes, secured by the mortgage and owing at that time.

Control defined

(2) For the purposes of clause *f* of subsection 1, "control" means control by another corporation, individual or trust that is in fact exercising effective control either directly or indirectly and either through the holding of shares of the corporation or of any other corporation or through the holding of a significant portion of any class of shares of the corporation or of the outstanding debt of the corporation or of any shareholder or member of the corporation, or by any other means whether of a like or different nature.

Ordinarily resident defined

(3) For the purpose of clause *g* of subsection 1, an individual shall be considered to be ordinarily resident in Canada if, at the time the expression is being applied,

- (a) he has been lawfully admitted to Canada for permanent residence in Canada;
- (b) he has sojourned in Canada during the next preceding 24 months for a period of, or periods the aggregate of which is, 366 days or more;
- (c) he is a member of the Canadian Forces required to reside outside Canada;
- (d) he is an ambassador, minister, high commissioner, officer or servant of Canada, or is an agent-general, officer or servant of a province of Canada, and resided in Canada immediately prior to appointment or employment by Canada or a province of Canada or is entitled to receive representation allowances;
- (e) he is performing services in a country other than Canada under an international development assistance program of the Government of Canada that is

prescribed for the purposes of paragraph *d* of subsection 1 of section 250 of the *Income Tax Act* (Canada),<sup>1970-71.
c. 63 (Can.)</sup> and resided in Canada at any time in the three month period preceding the day on which such services commenced; or

- (f) he resides outside Canada and is the spouse or child of, and is living with, an individual described in clause *c*, *d* or *e*.

2.—(1) Every person who tenders for registration in Ontario a conveyance whereby any land is conveyed to or in trust for any transferee who is not a non-resident person shall, before the conveyance is registered, pay a tax computed at the rate of three-tenths of 1 per cent of the value of the consideration for the conveyance up to and including \$35,000, and at the rate of six-tenths of 1 per cent upon the remainder of the value of the consideration.

(2) Every person who tenders for registration in Ontario a conveyance whereby any land is conveyed to or in trust for any transferee who is a non-resident person shall, before the conveyance is registered, pay a tax computed at the rate of 20 per cent of the value of the consideration for the conveyance.

(3) Where the same conveyance may be registered in more than one office under the registry system, in more than one office under the land titles system, or under both the registry system and the land titles system, the tax is payable only once in respect of the first of such conveyances tendered for registration.

(4) No tax is payable where the only transferee in a conveyance that is tendered for registration is the Crown or a Crown agency within the meaning of *The Crown Agency Act*.<sup>Exemption
R.S.O. 1970,
c. 100</sup>

(5) Where the Minister or some person authorized by him in writing to do so has indicated over his signature upon any conveyance that such tax as is payable has been paid, the conveyance may be registered without the payment of tax to the collector and without the production of the affidavits required by this Act, but the Minister or a person acting under his authority shall make the certification provided for by this subsection only when he is satisfied that all tax is paid or that security for the payment of the tax has been furnished to the Minister or to a collector in a form and of a kind that is acceptable to the Minister.

Returns by
collector

3. Every collector shall, in the first week of each month or at such other time as the Minister may from time to time require in writing, send to the Minister a statement of the amount of tax collected by him during the previous month or during such other period of time as the Minister shall in writing specify, and the collector shall pay over the amount of such tax to the Treasurer for the uses of Ontario.

Contents
of
affidavit
as to
consideration

4.—(1) There shall be filed with the collector and attached by him to the conveyance to which it relates an affidavit in the prescribed form setting out the true value of the consideration for the conveyance, the true amount in cash and the value of any property or security included in the value of the consideration, the amount or value of any lien or encumbrance subject to which the conveyance was made, and such other information as the Minister may prescribe to be disclosed in the affidavit.

Affidavit
by whom
to be made

(2) The affidavit required by subsection 1 may be made by the person making the conveyance or by the transferee or by any person acting for either of them under a power of attorney or as an agent authorized in writing so to act, or by the solicitor for the person making the conveyance or for the transferee, or by some other person authorized in writing by the Minister to make the affidavit.

Affidavit
as to
residence

(3) In addition to the affidavit required by subsection 1, there shall be filed with the collector and attached by him to the conveyance to which it relates an affidavit in Form 1 or in such other form as is prescribed, and the affidavit shall be made by,

- (a) the transferee to whom or in trust for whom any land is conveyed;
- (b) a trustee to whom any land is conveyed and who is shown as a trustee in the conveyance;
- (c) the transferee named in the conveyance;
- (d) an agent of any person referred to in clause *a*, *b* or *c*, if the agent is authorized in writing to make the affidavit; or
- (e) the solicitor acting in the transaction as the solicitor for any person referred to in clause *a*, *b* or *c*,

and such affidavit shall state whether the transferee to whom the land is being conveyed is a non-resident person or the trustee for a non-resident person, and shall state such other information as is required in order to complete the affidavit.

(4) The affidavit required by subsection 1 or 3 shall state what to affidavits, that the person making it has personal knowledge of the facts stated in it, and there shall be filed with the affidavit the power of attorney or written authorization, if any, referred to in subsection 2 or 3.

(5) If the collector is not satisfied that the affidavit required by subsection 1 sets out the true value of the consideration for the conveyance, he may refuse to register the conveyance to which the affidavit relates until the Minister has signified over his signature that he is satisfied that the value of the consideration stated in the affidavit is the true value of the consideration.

(6) Where a conveyance is tendered for registration without the affidavit required by subsection 3, tax is payable at the rate provided in subsection 2 of section 2, and the collector shall not register the conveyance until such tax is paid, but if it is subsequently established to the satisfaction of the Minister that, had the affidavit required by subsection 3 been furnished to the collector, tax would have been payable as provided in subsection 1 of section 2, the Minister may refund the amount paid under this subsection in excess of the tax provided for in subsection 1 of section 2.

5.—(1) Where the right of the collector to require payment of the tax is disputed by the person tendering a conveyance for registration, the tax may be paid under protest and the collector shall give a receipt in writing signed by him for the amount paid and stating that it was paid under protest, and he shall thereupon refer the matter for the decision of the Minister or of such official as the Minister appoints, who may order the refund of the tax or any part thereof to the person who paid it.

(2) In any dispute over the liability to tax of any person, the Minister may, after the tax has been paid, and if the dispute involves the interpretation of a provision of this Act, or involves an issue of law in which no facts are in dispute, or involves the proper inference to be drawn from facts that are not in dispute, agree in writing with the disputing party as to the undisputed facts and thereafter apply to the Supreme Court to have the issue in dispute determined, and if the Minister does not make the application within six weeks of the date upon which the undisputed facts have been agreed upon in writing, the other party to the dispute may apply to the court to have the issue determined.

6.—(1) Upon this Act receiving Royal Assent, every tax payable under this Act as a result of the tender of any tax

conveyance for registration after the 9th day of April, 1974 and before the day on which this Act receives Royal Assent that was not paid as herein provided for shall form a special lien upon the land conveyed by any such conveyance, and the special lien shall be in favour of Her Majesty in right of Ontario and has complete priority over every encumbrance of whatsoever kind that affects the land and that arose or came into existence on or after the 9th day of April, 1974 as part of or subsequent to the transaction or series of transactions that resulted in the tender for registration of the conveyance evidencing or carrying into effect the transaction or series of transactions.

**Expiry
of
lien**

(2) The special lien conferred on the Crown by this section expires on the 30th day of September, 1974, unless prior to the expiry of the special lien, there is registered against the land affected by the special lien a notice of lien in prescribed form.

**Notice of
intended
sale**

(3) Before the issue of a warrant under subsection 4, the Minister shall send by mail or by registered mail, or deliver by personal service, a notice to all persons who have an interest, encumbrance or charge registered under the land titles system or the registry system against the land for the sale of which the warrant is to be issued that he intends to have the land that is subject to the special lien conferred by this Act sold pursuant to subsection 4, and such notice shall be given not less than thirty days or more than sixty days before the issue of the warrant, and shall be sent, in the case of a notice sent by mail, to the latest known address of each person to whom notice is to be given and to such other address as, in the opinion of the Minister, may be more likely to bring the notice to the person's attention.

**Recovery
of lien
by sale**

(4) Subject to subsection 3, the Minister may, by his warrant directed to the sheriff of the county, district or judicial district in which is situate any land that is subject to the special lien conferred by this Act, require the sheriff to sell the land within six months or such longer period as is stated in the warrant, and the sheriff, upon receiving the warrant, shall proceed within the period specified to sell the land in the same manner as for a sale under a writ of execution issued out of the Supreme Court, and any person purchasing from the sheriff at such a sale shall take good title to the land free and clear of all encumbrances and claims of any kind of all persons whatsoever that do not have priority over the special lien but subject to all the rights and encumbrances of persons who have an interest in the land that have priority over the special lien.

(5) The proceeds of sale received by the sheriff from a sale^{Idem} under a warrant authorized by subsection 4 shall be applied first to pay the costs and expenses of the sheriff in conducting the sale and next in payment of the amount of tax that was a special lien on the land conferred by this Act, and any surplus thereafter remaining shall be paid, in order of their priorities, to those whose rights in the land were subject to the special lien, and, if the order of those priorities cannot be established by the sheriff, shall be paid into court to be dealt with as the court shall direct.

(6) At any time prior to a sale authorized by subsection 4,^{Right to discharge} any person interested in the land affected by the special^{lien} lien conferred by this Act may pay to the Minister a sum sufficient to discharge the special lien, and if the special lien is discharged by some person having an encumbrance against the land, the amount accepted by the Minister may be added to that person's encumbrance and shall, for all purposes and in every court, thereafter be treated as part of the encumbrance and shall bear interest at the rate provided for in the encumbrance and shall be collectable in the same way as the encumbrance is enforceable.

(7) Upon such conditions as he may impose, the Minister^{Waiver of lien} may abandon, postpone, release or waive with respect to all or any part of any land any special lien conferred by this Act.

7.—(1) Every person who knowingly contravenes any^{Offence} provision of this Act or who knowingly makes an affidavit required by this Act that falsely discloses the value of the consideration for any conveyance of land or falsely states that a person who is a non-resident person is not a non-resident person, is guilty of an offence and on summary conviction is liable to a fine of not less than the amount of tax that was not paid to the collector as provided for in this Act plus an amount of not less than \$50 and not more than \$1,000.

(2) For the purpose of any proceeding taken under this^{Compliance how proved} Act, the facts necessary to establish compliance on the part of the Minister with this Act as well as the failure of any person to comply with the requirements of this Act shall, unless evidence to the contrary satisfactory to the court is adduced, be sufficiently proved in any court of law by affidavit of the Minister or of any officer of the Ministry of Revenue.

(3) An information in respect of an offence under this^{Information when to be laid} Act shall be laid within six years of the time when the matter of the information arose.

Refund

8.—(1) Where a person has paid an amount under this Act as tax that is not payable as tax under this Act, the Minister may, upon receipt of satisfactory evidence that the amount was wrongly paid, authorize the Treasurer to refund such amount or any part thereof, but no refund shall be made unless it is applied for within three years after the date of the payment of any amount that is alleged not to have been payable as tax under this Act.

Idem

(2) Where a conveyance has been tendered for registration that conveys land both to non-resident persons and to persons who are not non-resident persons, the Minister may refund to the persons who are not non-resident persons an amount equal to the difference between,

- (a) the amount that would result from the application of the rates of tax in subsection 1 of section 2 to the value of the consideration attributable in the opinion of the Minister to the land conveyed to persons who are not non-resident persons; and
- (b) the amount of tax paid on the value of the consideration attributable in the opinion of the Minister to land conveyed to persons who are not non-resident persons,

but no refund under this subsection shall be made if the land is held in joint tenancy by the non-resident person and the persons who are not non-resident persons or if the Minister is of the opinion that the land conveyed to persons who are not non-resident persons cannot readily be distinguished from the land conveyed to non-resident persons.

Investigation

9.—(1) Any person thereunto authorized by the Minister for any purpose related to the administration or enforcement of this Act may at all reasonable times enter into any premises or place where any business is carried on or any property is kept or where anything is done in connection with any business or where any books or records are or should be kept and,

- (a) audit or examine the books and records and any account, voucher, letter, telegram or other document that relates or may relate to the information that is or should be in the books or records or to the amount of tax payable under this Act;

- (b) examine property described in any conveyance or any property, process or matter an examination of which may, in his opinion, assist him in determining the accuracy of any affidavit required by this Act or in ascertaining the information that is or should be in the books or records or in such affidavit, or the amount of any tax payable under this Act;
- (c) require any officer, director, agent or representative of a transferee a conveyance to whom has been registered as a result of which there may be a possible liability to pay tax under this Act, and any person on the premises to give him all reasonable assistance with his audit or examination and to answer all questions relating to the audit or examination either orally or, if he so requires, in writing, on oath or by statutory declaration and, for that purpose, he may require such person to attend at the premises or place with him; and
- (d) if during the course of any audit or examination it appears to him that there has been a violation of this Act or the regulations made under this Act, seize and take away any of the records, books, accounts, vouchers, letters, telegrams and other documents and retain them until they are produced in any court proceedings.

(2) The Minister may, for any purpose relating to the^{Idem} administration or enforcement of this Act, by registered letter or by a demand served personally, require from any person any information or additional information, or the production, or production on oath, of any books, letters, accounts, invoices, statements (financial or otherwise) or other documents within such reasonable time as is stipulated therein, provided that, in the opinion of the Minister or of the person authorized by him, it is necessary to make the demand in order to determine the liability or possible liability to tax under this Act.

(3) Where a book, record or other document has been seized, examined or produced under this section, the person by whom it is seized or examined or to whom it is produced, or any officer of the Ministry of Revenue, may make or cause to be made one or more copies thereof, and a document purporting to be certified by the Minister or a person thereunto authorized by the Minister to be a copy

made pursuant to this section is admissible in evidence and has the same probative force as the original document would have had if it had been proven in the ordinary way.

Compliance (4) No person shall hinder or molest or interfere with any person doing anything that he is authorized by this section to do or shall prevent or attempt to prevent any person doing any such thing, and notwithstanding any other law to the contrary, every person shall, unless he is unable to do so, do everything he is required by this section to do.

Offence (5) Every person who has failed to comply with or has contravened this section is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to a fine of \$25 for each day during which the default continues.

Form of affidavit **10.** Until a different form is prescribed, the form of affidavit prescribed by Ontario Regulation 251/73 made under *The Land Transfer Tax Act* shall be the form of affidavit required by subsection 1 of section 4.

Administration of oaths **11.** A person authorized to administer an oath under *The Land Titles Act* or *The Registry Act* may administer an oath for any of the purposes of this Act.

Assessment **12.—(1)** Where any person responsible for the payment of tax fails to pay it as required under this Act, the Minister may make an assessment of the tax for which such person is responsible and which has not been paid.

Notice of assessment (2) Where the Minister has made an assessment under subsection 1, he shall send by mail or by registered mail or deliver by personal service a notice of assessment to the person so assessed, and the amount of the assessment shall be remitted to the Minister by the person so assessed within thirty days from the date of mailing or delivery of the notice of assessment.

Idem (3) Where the Minister has made an assessment under subsection 1, the notice of assessment may provide that the amount assessed is payable forthwith.

Assessment from time to time (4) The Minister may, at any time he considers reasonable, assess or reassess any tax payable by any person under this Act.

(5) Where it appears from an inspection, audit or examination of the books of account, records or documents of any person that this Act or the regulations have not been complied with, the person making the inspection, audit or examination shall calculate the tax payable in such manner and form and by such procedure as the Minister considers adequate and expedient, and the Minister shall assess the amount of the tax.

(6) The Minister shall send by mail or by registered mail or deliver by personal service a notice of the assessment made under subsection 4 or 5 to the person so assessed at his latest known address, and the notice may provide that the amount assessed is payable forthwith.

(7) Liability for tax is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

(8) The Minister is not bound by any information delivered by or on behalf of any person responsible for the payment of the tax and may, notwithstanding any information that has been delivered or if no information has been delivered, assess the tax payable under this Act.

(9) An assessment, subject to being varied or vacated on an objection or appeal and subject to a reassessment, shall be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto.

(10) The amount of any assessment is payable within the time required by the notice of assessment whether or not an objection or appeal from the assessment is made or taken.

13.—(1) Where a person objects to an assessment made under section 12 he may, within ninety days after the day of mailing or delivery by personal service of the notice of assessment, serve on the Minister a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts.

(2) A notice of objection under this section shall be served by being sent by registered mail addressed to the Minister.

(3) Upon receipt of a notice of objection, the Minister shall with all due despatch reconsider the assessment and vacate, confirm or vary the assessment or reassess, and he shall thereupon notify the person who has made the objection of his action by registered mail.

Appeal

14.—(1) After the Minister has given the notification required by subsection 3 of section 13, a person who has served notice of objection under section 13 may appeal to the Supreme Court to have the assessment vacated or varied or reassessed, but no appeal under this section shall be instituted after the expiration of ninety days from the day on which notice has been mailed to such person under subsection 3 of section 13 and an appeal under this section shall not be made to the Divisional Court.

Appeal,
how
instituted

(2) An appeal to the Supreme Court shall be instituted by serving on the Minister a notice of appeal in duplicate in the prescribed form and by filing a copy thereof with the Registrar of the Supreme Court or with the Local Registrar of the Supreme Court for the county, district or judicial district in which is situate the designated land the tax imposed on which is under appeal.

Service

(3) A notice of appeal shall be served on the Minister by being sent by registered mail addressed to the Minister.

Contents
of notice of
appeal

(4) The person appealing shall set out in his notice of appeal a statement of the allegations of fact and the statutory provisions and reasons that he intends to submit in support of his appeal.

Reply to
notice of
appeal

(5) After the service on him of a notice of appeal under this section, the Minister shall with all due despatch serve on the person appealing and file in the Supreme Court where the notice of appeal was filed a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such further allegations of fact and of such statutory provisions and reasons as he considers relevant.

Matter
deemed
action

(6) Upon the filing in the Supreme Court of the material referred to in subsection 5, the matter shall be deemed to be an action in the court, and the practice and procedure of the court, including the right of appeal and the practice and procedure relating to appeals, apply to every matter that is deemed to be an action under this subsection, and every judgment and order given or made in every such action may be enforced in the same manner and by the like process as a judgment or order given or made in an action commenced in the court.

Disposition
of appeal

(7) The court may dispose of an appeal by allowing it, by dismissing it, or by allowing it in part and directing the Minister to vacate the assessment, vary the assessment or reconsider the assessment and reassess as indicated by the judgment of the court.

(8) In delivering judgment disposing of an appeal, the court may order payment or refund of tax by the appellant or by the Treasurer, as the case may be, and may make such order as to costs as is considered proper.

(9) No assessment shall be vacated or varied on appeal by reason only of an irregularity, informality, omission or error on the part of any person in the observance of any directory provision of this Act.

(10) The time within which a notice of objection under subsection 1 of section 13 or a notice of appeal under subsection 1 of this section is to be served may be extended by the Minister if application for extension is made before expiration of the time for service of the notice of objection or notice of appeal, as the case may be.

15.—(1) Where the tax imposed by this Act is not paid at the time provided for, interest on the unpaid tax shall be paid to the Treasurer at the rate of 9 per cent per annum or at such other rate as may be prescribed by the Lieutenant Governor in Council by regulation but no interest is payable for any period of time prior to the day upon which this Act receives Royal Assent.

(2) Any payment received by the Treasurer or a collector on account of any tax under this Act shall first be applied to any interest payable on the tax with respect to which the payment is made, but this subsection does not apply to payments on account of any fine or penalty payable under this Act.

16.—(1) Where tax has been paid or may be payable on the registration of a conveyance of land to a non-resident person, and that non-resident person satisfies the Minister that the land was or is to be acquired for the purpose of residential, commercial or industrial development and for resale to persons who are not non-resident persons, the Minister may, with the approval of the Lieutenant Governor in Council, defer the payment of the tax, or remit the tax paid, on such conditions as to the use and development of the land or otherwise as are considered advisable and sufficient to ensure the development of the land as proposed and its conveyance to persons who are not non-resident persons, and any tax deferred or remitted under this subsection constitutes a first lien and charge in favour of Her Majesty in right of Ontario on the land so acquired or to be acquired, and the lien and charge shall be effective upon registration by the Minister of a notice of such lien and charge, and the Minister may discharge the lien and charge in

whole or in part as the conditions that he has imposed are fulfilled.

Idem

(2) A deferral or remission under subsection 1, or a rebate under subsection 4, may not exceed the amount by which the rate of tax imposed by subsection 2 of section 2 exceeds the rate of tax imposed by subsection 1 of section 2, but may otherwise be for all or any part of the tax.

**Deferred
tax
cancelled**

(3) Where tax is deferred under subsection 1 upon conditions that are fulfilled, the amount of the tax so deferred is thereupon cancelled and no longer owing as tax under this Act, and where the conditions upon which any tax has been remitted under subsection 1 are not fulfilled, the tax so remitted thereupon becomes payable.

**Rebate
after
foreclosure**

(4) Where tax is paid under subsection 2 of section 2 as the result of the tender for registration of a final order of foreclosure under a mortgage or charge affecting land, and where the mortgagee or chargee who acquires the beneficial interest in the land by virtue of the final order of foreclosure sells, within three years after the date on which the final order of foreclosure was given, all or any part of the land so acquired to a person who is not a non-resident person, the Minister may, subject to subsection 2, rebate to the mortgagee or chargee the tax that was paid on the tender for registration of the final order of foreclosure and that is, in the opinion of the Minister, referable to the value of the consideration for the final order of foreclosure attributable to the portion of the land sold, and in addition to the amount of the rebate, the Minister may authorize payment to the mortgagee or chargee to whom the rebate is made of interest on the amount rebated at the rate of 4 per cent per annum or at such other rate as may be prescribed by the Lieutenant Governor in Council by regulation.

**When tax
not payable
under this Act**

17. Where a conveyance is tendered for registration,

- (a) after the 9th day of April, 1974 and before the 16th day of May, 1974, and is the result of an agreement that is proved to the satisfaction of the Minister to have been reduced to writing and executed by the parties to it before the 10th day of April, 1974; or
- (b) after the 15th day of May, 1974, and is the result of an agreement that is proved to the satisfaction of the Minister to have been reduced to writing and executed by the parties to it before the 10th day of

April, 1974 and that has been filed with the Minister before the 16th day of May, 1974,

the tax payable by the person tendering the conveyance for registration shall be the tax provided for in *The Land Transfer Tax Act*, as amended by *The Land Transfer Tax Amendment Act, 1972*, notwithstanding the repeal of those Acts, and the tax provided for in this Act does not apply to the person tendering the conveyance for registration.

R.S.O. 1970.
c. 235
1972, c. 15

18.—(1) The Minister may make regulations,

Regula-
tions

- (a) prescribing any form required by this Act or that, in his opinion, will assist in the administration of this Act, and prescribing how and by whom any prescribed form shall be completed and what information it shall contain;
- (b) repealing Form 1 and substituting another Form therefor.

(2) The Lieutenant Governor in Council may make regula-^{Idem} tions,

- (a) exempting from tax any person tendering for registration any class of conveyance to which it is determined that this Act was not intended to apply, or any conveyance to persons prescribed for the purpose of this clause;
- (b) providing for the collection of tax, the appointment of persons other than collectors to collect the tax, and establishing procedures for the collection of the tax;
- (c) providing for the refund of tax in whole or in part owing to special circumstances, and prescribing the terms and conditions under which such refund may be made;
- (d) authorizing or requiring the Deputy Minister of Revenue or any officer of the Ministry of Revenue to exercise any power or perform any duty conferred or imposed upon the Minister by this Act;
- (e) providing for the method of calculating and ascertaining the value of the consideration in any case or class of cases;
- (f) authorizing any person or persons, on such conditions and subject to such rules as may be specified,

to exempt from the tax or any part thereof imposed by subsection 2 of section 2, or to refund such tax or any part thereof to, any person tendering for registration any class of conveyance to which it is determined that this Act was not intended to apply, or any conveyance to any non-resident person;

- (g) providing for the payment of interest on any refund or rebate of tax authorized by this Act or the regulations, and prescribing the rate of such interest and the method by which it is to be calculated;
- (h) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

Idem (3) A regulation is, if it so provides, effective with reference to a period before it was filed.

Acts repealed **19.** *The Land Transfer Tax Act*, being chapter 235 of the Revised Statutes of Ontario, 1970, and *The Land Transfer Tax Amendment Act, 1972*, being chapter 15, are repealed.

Commencement **20.**—(1) Upon receiving Royal Assent, this Act shall be deemed to have come into force on the 10th day of April, 1974, and the tax imposed by this Act shall be levied and paid as herein provided notwithstanding that this Act receives Royal Assent after the 10th day of April, 1974.

Application (2) Where any act or thing that is required by this Act is done or omitted to be done on or after the 10th day of April, 1974 and before the day upon which this Act receives Royal Assent, the fact that this Act was not in force at the time the act or thing was done or omitted to be done shall not relieve any person from the liability to tax imposed by this Act or from liability to any penalty or offence provided for in this Act.

Short title **21.** This Act may be cited as *The Land Transfer Tax Act, 1974*.

Form 1

The Land Transfer Tax Act, 1974

AFFIDAVIT OF RESIDENCE

IN THE MATTER OF THE CONVEYANCE OF.....

.....
.....
(insert brief description of land)

To.....
(insert names of all transferees)

I,.....of.....
(print name)

.....
(print address)

MAKE OATH AND SAY THAT:

1. I am (place a clear mark within the square opposite that one of the following paragraphs that describes the capacity of the deponent):

(a) A person to whom or in trust for whom the land conveyed
in the above-described conveyance is being conveyed

(b) One of the trustees named in the above-described con-
veyance to whom the land is being conveyed

(c) A transferee named in the above-described conveyance

(d) An agent authorized in writing to act for

.....who is a person described in
(insert name of principal)

paragraph.....above (insert only one of paragraph
(a), (b), or (c) above)

(e) The solicitor acting in this matter for

.....who is a person described in
(insert name of client)

paragraph.....above (insert only one of paragraph (a),
(b) or (c) above);

and as such, I have personal knowledge of the facts herein deposed to.

2. None of the transferees to whom or in trust for whom the land
conveyed in the above-described conveyance is being conveyed is,
within the meaning of the Act, a non-resident person (strike out this
paragraph if inapplicable).
3. The following persons to whom or in trust for whom the land con-
veyed in the above-described conveyance is being conveyed are non-
resident persons within the meaning of the Act.
-
.....
.....

(insert the name and place of residence—or in the case of a corporation, the place of incorporation—of any transferee who is a non-resident person. If space is insufficient, attach a list of those transferees who are non-resident persons.)

4. I have read and considered the definitions of "non-resident corporation" and "non-resident person" set out respectively in clauses *f* and *g* of subsection 1 of section 1 of the Act.

Sworn before me
in the
of
this
day of 19 }
 }

A Commissioner, etc.

BILL 26

The Land Transfer Tax Act, 1974

1st Reading

April 9th, 1974

2nd Reading

April 22nd, 1974

3rd Reading

April 26th, 1974

THE HON. A. K. MEEN
Minister of Revenue

3 1761 114705023

